SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 578.

THE UNITED STATES, APPELLANT,

vs.

THE SPANISH SMACK "PAQUETE HABANA," JUSTA GALBAN, ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the district court of the United States, southern district of Florida.

UNITED STATES OF AMERICA
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the Spanish sloop "Paquete" and cargo, her tackle, apparel and furniture, and cargo, in a cause of prize, alleges—

That pursuant to instructions from the President of the United States Robert Berry, a commander of the United States Navy, in and with the United States ship of war the "Castine," her officers and crew, did, on the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas as a prize of war the said "Paquete" with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and all due proceedings being had the said sloop "Paquete," together with her tackle, apparel, furniture, and her cargo, may on the final hearing of this cause by the definitive sentence and decree of this court be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and monition issue as prayed, returnable Thursday, day of 13th May, A. D. 1898, 10.30 a. m.

Entered as of course.

E. O. LOCKE, *Clerk.*
By J. OTTO, *D'y Clerk.*

(Endorsed:) In the district court of the United States, southern district of Florida. United States vs. Spanish sloop "Paquete" and cargo. Libel. Filed Apr. 27th, 1898. E. O. Locke, clerk.

2 UNITED STATES OF AMERICA:

District court of the United States, southern district of Florida.

The President of the United States to John F. Horr, esq., the marshal of the United States for the southern district of Florida, greeting:

You are hereby commanded forthwith to attach, seize, and take into your custody the schooner "Paquete" and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court rooms, in Key West, the 13th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-second.

[SEAL.] E. O. LOCKE, *Clerk.*
By J. OTTO, *Deputy.*

(Endorsed:) U. S. district court, southern district of Florida, United States vs. sloop "Paquete" and cargo. Attachment. Filed Apr. 28, 1898. E. O. Locke, clerk.

Return of marshal.

Received the within writ of attachment April 27th, 1898, and fully executed it on the same day by attaching and taking into my custody the Spanish sloop "Paquete."

JOHN F. HORR, *U. S. Marshal.*
By ALFRED ATCHINSON, *Deputy.*

UNITED STATES OF AMERICA:

District court of the United States, southern district of Florida.

The President of the United States to John F. Horr, esq., the marshal of the United States for the southern district of Fla., greeting:

Whereas, on the 27th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, esq., filed in the office of the clerk of said court their libel against the Spanish sloop "Paquete," in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. "Castine" April 25th, 1898;

Wherefore the said libellant prays that the usual process of attachment may issue against the said sloop "Paquete," that monition may issue citing all parties having or claiming any interest or property in said sloop "Paquete" to appear and answer upon oath all

3 and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for service in said cause, and that the said sloop "Paquete" may be condemned and sold to pay the said prize money, with costs, charges, and expenses,

and that the libellant may have such other and further relief in the premises as in law and justice they may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Thursday, the 12th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said sloop "Paquete" to appear at an admiralty session of said court, to be held at the court rooms of said court of Key West, in said district, on Thursday, the 12th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two other such copies in the most public places of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 12th day of May aforesaid, with your certificate of execution hereon written.

Witness the honorable James W. Locke, judge of said court, at Key West, in said district, this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-first.

E. O. LOCKE, *Clerk.*
By J. OTTO, *D'y.*

(Endorsement:) U. S. district court, southern district of Fla. United States vs. Sloop "Paquete" and cargo. Monition. Filed Apr. 28, 1898. E. O. Locke, clerk.

Return of marshal.

Received the within writ of monition Apr. 27, 1898, and executed it on the same day by reading same to the master of the Spanish sloop "Paquete" and posting 2 copies, as within commanded.

JOHN F. HORR,
U. S. Marshal, So. Dist. of Fla.
By ALFRED ATCHINSON,
Deputy U. S. Marshal.

KEY WEST FLORIDA, *19th May, 1898.*

SIR: On April 25th last the Spanish fishing sloop "Paquete," of Havana, a blockaded port, was captured by the U. S. S. "Castine" off the port of Mariel, Cuba, at 6.10 p. m.

2. The prize, with crew, and all papers found on board in a sealed
4 package were sent in charge of a prize crew to Key West, Florida, and there delivered into the charge of the United States marshal.

Very respectfully,

R. M. BERRY,
Commander, U. S. Navy, Commanding.

(Endorsed:) Schooner "Paquete." Claim for prize shares by U. S. S. "Castine." Filed Apr. 25, 1898. E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

THE UNITED STATES OF AMERICA
vs.
SLOOP "PAQUETE." } Prize.

B. F. Tilley, being duly sworn, says: My name is Benjamin F. Tilley. I am an American, in U. S. Navy, on board U. S. S. "Newport;" that on the 25th day of April, A. D. 1898, the Spanish sloop "Paquete" was captured as a prize of war by the U. S. S. "Castine," commanded by Robert Berry, commander, U. S. N.; that said sloop "Paquete" was delivered by said Robert Berry to Rear-Admiral Wm. T. Sampson (commanding North Atlantic Squadron), together with the documents and other papers found on said sloop "Paquete;" that said sloop "Paquete," with said documents and papers aforesaid, were turned over to a/lant, as prize master, with instruction to proceed to Key West, Fla.; that said papers and documents this day delivered to G. Bowne Patterson, prize commissioner, at Key West, are the identical documents and papers pertaining to the sloop "Paquete" delivered to him, and that they are in the same condition as when delivered to him.

B. F. TILLEY,
Commander, U. S. Navy.

Sworn to and subscribed before me this 25th day of April, A. D. 1898.

G. BOWNE PATTERSON,
U. S. Prize Commissioner.

(Endorsed:) U. S. vs. Schr. "Paquete." Affidavit of prize master. Filed Apr. 25, 1898. E. O. Locke, clerk.

Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined in preparatorio.

1st. interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude, or part, and when, was the said ship and goods concerning which you are now examined taken and seized? Upon what pretence and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made at the time when the said ship was taken; and if yea, how many guns were fired, and by

whom, and by what ship or ships were you taken? Was the ship or vessel by which you were captured a ship of war or a vessel acting without any commission, as you believe? Were any other, and what, ship' in sight at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you or any of the officers or mariners belonging to the ship or vessel concerning which you are now examined any, and what, part, share, or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have. Did you belong to the said vessel at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail during her said voyage before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port and at what time, particularly from the last clearing port, did the said ship sail previously to the capture? Set forth
6 all the ports to which she has sailed and at which she has touched and traded during her whole voyage out and home.

8th interrogate. What lading did the said vessel carry at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board at the time she was taken? When was the same put on board? Set forth the different species of lading and the quantity of each sort. Has any part of the cargo of said vessel been unladen since the commencement of her original voyage? If so, at what port or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession, and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel; and if any such were made, in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any one of the said consignees or shippers any, and what, interest in the said goods? If yea, whereon do you found your belief that they have such interest? Do you verily believe that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters, or instruments relative to the ship and goods concerning which you are now examined? If yea, set forth where
7 they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom was such charter party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters, or other writings were on board the ship at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which you have sustained, or may sustain by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel, or ship to another? From what, and to what shore, quay, boat, barque, vessel, or ship, and when and where was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers, or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

8 24th interrogatory. Were any papers delivered out of the said ship or vessel and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture of the said ship? And when and where, by whom and by whose orders, and for what purpose and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were and are all the passports, sea briefs, charter parties, bills of sale, invoices, and papers which were found on board entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to or on behalf of the

person or persons who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And, if not, where was the ship at the time? Had any person on board any let-pass or letters of safe conduct? If yea, from whom and for what business? Had the said ship any license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by
9 the ship's papers? Was the ship, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered at any and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid or to be paid a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know or believe in your conscience such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe that if the ship should be restored she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where they put on board; and by whom or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

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In the district court of the United States in and for the southern district of Florida. In admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" AND HER CARGO. } Prize.

Deposition of JUAN PAZOS, a witness produced, sworn, and examined in preparatorio on the 20th day of May, A. D. 1898, at the United States court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Paquete," and her cargo.

1. To the first interrogatory deponent answers:

My name is Juan Pazos. I was born in Spain. I have lived for seven years last past in Cuba. I now live in Havana, Cuba. I have lived there for 14 years. I am a Spanish subject. I am a married man. My wife and family live in Spain.

2. To the second interrogatory deponent answers:

I was present at the time of capture of the vessel. The vessel has no license or commission; she is a coasting vessel. I have a license to fish, issued by the Spanish Government. I gave it to the prize master.

3. To the third interrogatory deponent answers:

The vessel was captured April 25th, 1898, near Mariel, and we were going to Havana when captured. We were captured because of the war between Spain and the United States. We were carried into the port of Key West. The vessel sailed under the Spanish flag. We had no other colors on board. There was no resistence made at the time of the capture. The vessel which captured us was a U. S. warship. I do not know her name. There were some other ships in sight, but I do not know their names.

4. To the fourth interrogatory deponent answer:

I am the master of the vessel. I took possession of her at Havana on the 25th day of March, 1898. The owner, Justa Galvan, delivered possession to me.

5. To the fifth interrogatory deponent answers:

The vessel is of 25 tons burden; three mariners, including myself. I took them on board at Havana. I shipped them.

6. To the sixth interrogatory deponent answers:

None of the officers or crew had any interest in the vessel, but the crew and captain had an interest in cargo of fish, $\frac{2}{3}$ for the boat's crew and $\frac{1}{3}$ for the owner of the boat. I have known the boat for 5 years. I first saw her in Havana. She was built in Key West.

7. To the 7 interrogatory deponent answers:

The vessel is named the "Paquete Habana." I know she has been called by that name ever since I knew her. She had another name at one time. I think it was "Restless." This boat was a fishing smack and was engaged in running out of Havana for fishing trips.

8. To the 8th interrogatory deponent answers:

She had a cargo of fish when she was captured. We, the crew, caught the fish out of the sea. We had 40 kintals of fish on board at the time of the capture.

9. To the 9th interrogatory deponent answers:

The owner of the vessel is Justa Calvan. She lives in Havana, and is a Spaniard by birth. The present owner has been in possession for five years.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bill of sale.

11. To the 11th interrogatory deponent answers:

The cargo was put on board as we caught the fish from the *the* ocean.

12. To the 12th interrogatory deponent answers:

I have already answer'd that question in my answer to the sixth interrogatory.

13. To the 13th interrogatory deponent answers:

There was no bill of lading.

14. To the 14th interrogatory deponent answers:

There are no bills of lading or documents or invoices in the U. S. relating to the vessel and her cargo.

11 15. To the 15th interrogatory deponent answers:

There was no charter-party for this voyage.

16. To the 16th interrogatory deponent answers:

There was only a crew list on board at the time of the capture, which I delivered to the prize master.

17. To the 17th interrogatory deponent answers:

The said ship has never before been captured or condemned as prize.

18. To the 18th interrogatory deponent answers:

I have sustained a loss by the capture of this ship because I owned a part of the cargo. I have not received any indemnity or promise of indemnity for any loss which I have sustained or might sustain by reason of this capture.

19. To the 19th interrogatory deponent answers:

The ship and cargo is not insured.

20. To the 20th interrogatory deponent answers:

In case we had arrived at our port of destination and the goods had been unladen they would have belonged to the persons named.

21. To the 21st interrogatory deponent answers:

The cargo was taken from Spanish waters.

22. To the 22nd interrogatory deponent answers:

The cargo was taken from the sea.

23. To the 23rd interrogatory deponent answers:

There are no bills of lading or invoices.

24. To the 24th interrogatory deponent answers:

The crew book was delivered to the prize master.

25. To the 25th interrogatory deponent answers:

The bulk was broken at Key West by the U. S. marshal.

26. To the 26th interrogatory depo-ent answers:

There were no passengers or other persons of any discription on the vessel at the time of the capture except the crew.

27. To the 27th interrogatory deponent answers:

She had no passports or sea briefs.

28. To the 28th interrogatory deponent answers:
I cannot write much. I have not since or written any letters or papers since I was captured.
29. To the 29th interrogatory deponent answers:
We were sailing toward Havana when we were captured. She was about 11 miles.
30. To the 30th interrogatory deponent answers:
I do not know anuthing about and bill of sale. If the vessel was released she would belong to the person before stated to be the owner.
31. To the 31st interrogatory deponent answers:
There were no cannons of and discription or arms or am-unition on board.
32. To the 32nd interrogatory deponent answers:
I have already stated all that I know concerning the true prope-ty and destination of the ship and cargo.

JUAN PAZOS.

12 Sworn to and subscribed before me May 20th, 1898.
J. M. PHIPPS,
Prize Commissioner.

(Endorsed:) Standing interrogatories. Filed May 26th, 1898. E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken in preparatorio, and all due proceedings having been had and proclamation having been duly made in open court, and no persons appearing to claim any portion of said sloop "Paquete" or cargo, and a decree pro confesso having been duly entered for default of claimants, and it appearing to the court that the said sloop "Paquete" and cargo are enemy's property and were attempting to violate the blockade of Havana, now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said sloop "Paquete" and cargo are condemned and forfeited to the United States as lawful prize of war.

It is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, subject to the order of this court, as required by law.

JAMES W. LOCKE, *Judge.*

Key West, Florida, May 23rd, 1898.

(Endorsed:) U. S. district court, southern district of Fla. United States vs. Sloop "Paquete" and cargo. Decree. Filed May 26, 1898. E. O. Locke, clerk.

The United States district court, southern district of Florida.

THE UNITED STATES
against
THE "PAQUETE HABANA."

A motion having been made in behalf of the owners of the above-named vessel to open the decree of condemnation and sale herein and to allow a claim to be filed, and said motion having been argued by counsel for the vessel and for the Government, it is now—

Ordered that the decree of condemnation and sale heretofore made herein be vacated and set aside, and that leave be, and hereby
13 is, granted to the owners of the vessel to file a claim in the name of the master on or before May 30th, 1898.

Key West, May 28, 1898.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. "Paqueta." Order setting former decree aside. Filed May 28, 1898. E. O. Locke, clerk.

United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
against
THE "PAQUETE HABANA." } Claim.

And now comes Juan Pasos, master and lawful bailee of the fishing boat "Paquette Habana," and intervening for the interest of Justa Galbau, widow, in the said fishing boat, her tackle, apparel, and furniture, and in her fish, as the same are attached as prize at the instance of the United States, he claims the same accordingly; and the said claimant avers that before and at the time of the alleged capture of the said vessel the above-named Justa Galban, widow, was the bona fide owner of the said vessel, her tackle, apparel, and furniture, and of one-third of said fish, and that the other two-thirds of said fish belonged to this claimant and the other members of the crew, all of whom are Cubans, who prior to the recognition of Cuban independence were Spanish subjects, and that no other person is the owner of said vessel or fish, and that the claimant is the lawful bailee of both the vessel and fish. He further avers that said vessel and fish under the general law and the proclamation of the President of April 26th, 1898, were privileged and exempt from capture and condemnation as a fishing vessel, with her catch, and he denies that the vessel and fish are lawful prize of war.

Wherefore we pray leave to defend accordingly and to show cause why the vessel and fish at the time of said capture were not liable to seizure and condemnation as prize of war.

JUAN PASOS.

Sworn to and subscribed before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

CONVERS & KIRLIN,
Proct. for Claimants.

14 United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
against
THE "PAQUETE HABANA." } Test affidavit.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

JUAN PASOS, being duly sworn, duly says:

1. I am master of the fishing boat "Paquete Habana" and lawful bailee of the vessel and her fish. The vessel belongs to Justa Galban, widow, of Havana, a native-born Cuban, domiciled in Cuba at the time of the recognition of the independence of the Cuban people by Congress, and is used exclusively in the coast waters of Cuba for catching small fish. Her keel length is about 43 feet and her tonnage about 25 tons. The fishing is done on shares, one-third of the catch belonging to the owner and two-thirds to the crew. The fish now on board are thus owned. They are kept and sold alive.

2. I left Havana on the last trip March 25th and proceeded to Cape San Antonio, on the coast of Cuba, in coast waters between the reefs. We finished there 25 days and then started back to Havana with the catch. We were stopped by the blockading squadron near Havana on April 25th, 1898. Prior to said time we were unaware of the existence of war or of any blockade. We were stopped by the United States ship "Castine" and brought into Key West as prize of war. No effort was made by the vessel to run the blockade after we learned of its existence.

3. I have been master of the said vessel for 4 years; then I was off her 2 years, and captain again 1 month. During that time the vessel has carried no cargo save her catches of fish, and has carried no passengers.

Her crew consists of 3 persons, including the captain. She is of sloop rig, and has one mast.

JUAN PASOS.

Sworn to before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

(Endorsed:) U. S. district court, southern dist. of Fla. U. S. vs. "Paquete Habana." Claim and test affidavit. Convers & Kirlin, proctors for cl't. Filed May 30, 1898. E. O. Locke, clerk.

In the district court of the United States for the southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken in preparatorio, and all due proceedings having been

had, and proclamations having been duly made in open court,
15 and Juan Pasos having appeared and claimed said sloop "Paquete" and cargo upon the grounds of her being a fishing vessel and not liable to capture, and the case being fully heard, and it appearing to the court that the said sloop "Paquete" and cargo are enemy's property—

Now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said sloop "Paquete" and cargo be condemned and forfeited to the United States as lawful prize of war, said claim notwithstanding.

And it is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, as required by law.

JAMES W. LOCKE, *Judge.*

Key West, Fla., May 30th, 1898.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Sloop "Paquete." Decree of condemnation. Filed May 30, 1898, E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE" AND CARGO. } Prize.

This cause coming on to be heard and a decree pro confesso having been entered (and final decree of condemnation and forfeiture pronounced)—

Now, on motion of Convers & Kirlin, said decree is set aside, and is permitted to file a claim for said vessel and cargo on account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered, adjudged, and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

JAMES W. LOCKE, *Judge.*

Key West, Florida, May 30th, 1898.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Sloop "Paquete." Decree. Filed May 30, 1898, E. O. Locke, clerk.

16 Whereupon a writ of venditioni exponas was issued to the marshal of said district, commanding him forthwith to sell at public auction the said prize "Paquete Habana," her tackle, &c., and to deposit the proceeds thereof with the assistant treasurer of the United States at New York, to the credit of said court.

Which writ was afterwards by the marshal returned, showing the proceeds of said vessel to be the sum of four hundred and ninety dollars, which sum was by the marshal deposited as commanded, viz:

Marshal's return.

Received the within writ this 26th day of May, 1898, and executed same by selling said vessel "Paquete Habana" at public auction for $490.00 and deposited the said sum with the assistant treasurer of the United States, as directed therein.

JOHN F. HORR, *U. S. Marshal.*

Sep. 28th, 1898.

(Endorsed:) United States vs. Smack "Paquete." Vend. Ex. Issued May 26, 1898. Returned & filed Sep. 28th, 1898, E. O. Locke, clerk.

17 District court of the United States, southern district of Florida, 1898.

The sloop "Paquete Habana" in a cause of prize.

Interrogatories to be answered by parties claiming to share distribution of prize money in the above entitled cause, or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank, and office, and the service you are now on.

2. In what vessel were you, and in what capacity, at the time of the capture of the above named ship?

3. State particularly all the part your vessel took in the pursuit or capture of the prize.

4. What vessel of the Navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.

5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."

6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?

7. Was your vessel within signal distance of the vessel or vessels of the Navy that made the prize at any time during the chase, and if so, at what time? Was she so when the prize was first sighted? Please state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.

8. Did your vessel exchange signals with or receive signals from any vessels of the Navy engaged in the chase or making the capture? If so, what signals and when, and was the chase in sight at the time?

9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to share in the distribution of the prize money. If so, on what ground do you put your claim? Please state all the facts in relation thereto.

10. Please state any other facts within your knowledge which you have not yet stated, tending to show what vessels of the Navy were or were not within signal distance of the vessel or vessels making the prize.

18 In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" OF HAVANA. } Prize.

Deposition of W. V. BRONOUGH, a witness produced, sworn, and examined on the 31 day of May, 1898, on board the U. S. S. "Castine," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Castine" for a share in said prize and her cargo.

1. My name is W. V. Bronough; my age, 42 years; my rank, lieutenant, U. S. Navy, and I am now serving as watch officer of the U. S. S. "Castine."

2. At the time of the capture of the "Paquete" I was in the U. S. S. "Castine," serving as watch officer.

3. Shortly before 6 p. m. of the 25th day of April, 1898, this vessel, at the time being engaged in the blockade of the coast of Cuba and near Mariel, overhauled and captured the Spanish sloop "Paquete," of Havana.

At about the same time the U. S. S. "Newport," then being within signal distance of this vessel, captured and took possession of the Spanish schooner "Pireneo" of Havana.

The "Newport" at the time of these captures was a couple of miles to the northward of Mariel, Cuba.

After the captures of the above-mentioned vessels the U. S. S. "Castine" communicated verbally with the U. S. S. "Newport," which vessel took both schooner and sloop in tow for Key West, Florida.

The sloop "Paquete" was manned by a prize crew detailed from the "Castine."

4. The U. S. S. "Newport" was within signal distance at the time the "Paquete" was captured.

By the words "signal distance" I mean a distance in which all flag signals could have been made out.

5. At the time the prize was boarded and possession taken of her the "Castine" was about two miles to the northward of Mariel, Cuba.

6. See answer No. 5.

7. See answer No. 5.

8. After capture was made by this vessel verbal communication with the U. S. S. "Newport" was had.

9. See answer to No. 5.

10. All facts stated above.

W. V. BRONOUGH,
Lieutenant, U. S. Navy.

19 Sworn to and subscribed before me May 31, 1898.

R. M. BERRY,
Commander U. S. Navy, Commanding Officer U. S. S. "Castine."

(Endorsed:) "Paqueta." Filed June 15, 1898. E. O. Locke, clerk.

In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUETE" OF HAVANA. } Prize.

Deposition of HENRY MORRELL, a witness produced, sworn, and examined on the 31st day of May, 1898, on board the U. S. S. "Castine," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Castine" for a share in said prize and her cargo.

1. My name is Henry Morrell; my age, 44 years; my rank, lieutenant U. S. *S.* Navy, and I am now serving as navigator of the U. S. S. "Castine."

2. At the time of the capture of the "Paquete" I was in the U. S. S. "Castine," serving as navigator.

3. Shortly before 6 p. m. of the 25th of April, 1898, this vessel, at the time being engaged in the blockade of the coast of Cuba and near Mariel, overhauled and captured the Spanish sloop "Paquete" of Havana.

At about the same time the U. S. S. "Newport," then being within signal distance of this vessel, captured and took possession of the Spanish schooner "Pireneo" of Havana.

The "Newport" at the time of these captures was a couple of miles to the northward of Mariel, Cuba.

After the capture of the above-mention' vessel the U. S. S. "Castine" communicated verbally with the U. S. S. "Newport," which vessel took both schooner and sloop in tow for Key West, Florida.

The sloop "Paquete" was manned by a prize crew detailed from the "Castine."

4. The U. S. S. Newport was within signal distance at the time the "Paquete" was captured.

By the words "signal distance" I mean a distance in which all flag signals could have been made out.

5. At the time the prize was boarded and possession taken of her the "Castine" was about two miles to the northward of Mariel, Cuba.

6. See answer to No. 5.

7. See answer to No. 5.

8. After capture was made by this vessel verbal communication with the U. S. S. "Newport" was had.

9. See answer to No. 5.

10. All facts stated above.

H. MORRELL,
Lieutenant, U. S. Navy.

Sworn to and subscribed before me May 31, 1898.

R. M. BERRY,
Commander, U. S. Navy, Commanding Officer U. S. S. "Castine."

(Endorsed:) "Paquette." Filed June 15, 1898. E. O. Locke, clerk.

In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP PAQUETE. } Prize.

Deposition of B. F. TILLEY, a witness produced, sworn, and examined on the 15th day of June, 1898, on board the U. S. S. "Newport," on the standing interrogatories established by the United States court in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of the U. S. S. "Newport" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is B. F. Tilley, commander, U. S. Navy; commanding U. S. S. "Newport," North Atlantic station; block'ing ports on north coast of Cuba.

2. I was attached to and on board the U. S. S. "Newport," commanding same.

3. About 6 p. m. April 25th, 1898, the U. S. S. "Castine" took as prize sloop "Paquette." The "Newport" was engaged at that time in taking as prize schooner "Pironeo." The "Paquete" was first chased by the "Newport," but, as it was considered possible for the "Castine" to capture her, the "Newport" was headed for the "Pironeo." The "Newport" towed the "Paquete" to Key West.

4. The "Newport" and "Castine" were in company, and the "Newport" left to chase the sails.

5. Within easy reading of ordinary flag signals.

B. F. TILLEY.

Sworn to and subscribed before me this June 15th, 1898.

J. H. BULL,
Lieutenant, U. S. N., Executive Officer U. S. S. Newport.

(Endorsed:) Filed June 15th, 1898. E. O. Locke, clerk.

21 In the district court of the United States in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP PAQUETE. } Prize.

Deposition of J. H. BULL, a witness produced, sworn, and examined on the 15th day of June, 1898, on board the U. S. S. "Newport," on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the claim of U. S. S. "Newport" for a share in said prize and her cargo.

1. To the first interrogatory deponent answers:

My name is J. H. Bull; lieutenant, U. S. Navy, executive officer U. S. S. "Newport," North Atlantic station; blockading ports on north coast of Cuba.

2. To the second interrogatory deponant answers:
I was attached to and on board the U. S. S. "Newport;" executive officer of same.

3. About 6 p. m. April 25th, 1898, the U. S. S. "Castine" took as prize the sloop "Paquete." The "Newport" was engaged at the time in taking as prize the schooner "Pironeo." The "Paquete" was first chased by the "Newport," but, as it was considered possible for the "Castine" to capture her, the "Newport" was headed for the "Pironer." The "Newport" towed the "Paquete" to Key West.

4. The "Newport" and "Castine" were in company, and the "Newport" left to chase the sails.

5. Within easy reading of ordinary flag signals.

J. H. BULL.

Sworn to and subscribed before me this June 15th, 1898.

B. F. TILLEY,
Commander, U. S. Navy, Com'd'g U. S. S. Newport.

(Endorsed:) Filed June 15th, 1898. E. O. Locke, clerk.

District court of the United States, southern district of Florida.
22 In Admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SLOOP "PAQUITA" AND CARGO. } Prize No. 16.

To the Hon. JAMES W. LOCKE, *judge of said court.*

SIR: I have the honor to report that upon examination of the testimony of the captors in the above-entitled cause, I consider that the following vessels are entitled to share in the prize, they being within signal distance and in position to render assistance, if required, viz, U. S. steamers "Castine," "Newport."

Respectfully submitted,
J. K. WINN,
Commander, U. S. N., Prize Commr.

(Endorsed:) Prize No. 16—"Paquita." Filed Oct. 3, 1898, E. O. Locke, clerk.

23 UNITED STATES OF AMERICA, ss:

[SEAL.] The President of the United States of America to the honorable the judge of the district court of the United States for the southern district of Florida, greeting:

Whereas lately in the district court of the United States for the southern district of Florida before you, in a cause between The United States, libellant and The Spanish smack "Paquete Habana" and cargo, Juan Pasos, claimant, wherein the decree of the said district court, entered in said cause on the 30th day of May, A. D. 1898, is in the following words, viz:

"This cause coming on to be heard and a decree pro confesso having been entered (and final decree of condemnation and forfeituer pronounced);

"Now, on motion of Convers and Kirlin, said decree is set aside, and is permitted to file a claim for said vessel and cargo on

account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered, adjudged, and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

"JAMES W. LOCKE, *Judge.*

"Key West, Fla., May 30th, 1898."

24 As by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eight hundred and ninety-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed,

And it is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree that the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with damages and costs.

January 8, 1900.

And afterwards, to wit, on January 29, 1900, the following order was entered by said Supreme Court, viz:

On consideration of the motion to modify the decree entered herein by this court on January 8, 1900, and of the argument of counsel thereupon had, as well in support of as against the same, and to secure the carrying out of that decree, and of the opinion delivered on the same day, according to their true meaning and intent,

It is now here ordered by the court that said decree be, and the same is hereby, modified so as to direct that the damages to be allowed shall be compensatory only and not punitive.

25 You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of February, in the year of our Lord one thousand nine hundred.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Supreme Court of the United States. No. 395, October term, 1899. The Spanish smack "Paquete Habana," &c., vs. The United States. Mandate. Filed this 19th day of Feb'y, 1900. E. O. Locke, clerk, by Louis Starke, deputy clerk.

26 At a stated term of the United States district court for the southern district of Florida, held at the city of Jacksonville, this ——— day of March, 1900:

Present: Honorable James W. Locke, judge.

THE UNITED STATES, LIBELLANT,
against
THE SPANISH SMACK "PAQUETE HABANA" and her cargo, Juan Pasos, claimant.
} Interlocutory decree.

A final degree having been entered herein on May 30th, 1898, adjudging and decreeing that the said "Paquete Habana" and her cargo of fish, be condemned, forfeited, and sold as lawful prize of war, and the said vessel and cargo subsequently, and by order of this court, having been sold under and pursuant to the said decree, and the proceeds of said sale having been duly paid into the registry of the court:

And the proctors for the claimant having this day presented to this court the mandate of the Supreme Court of the United States, dated February 13, 1900, wherein it is recited that the cause has been heard before that court on the appeal of the claimant, and that, on consideration thereof, it has been by that court, to wit, on January 8th, 1900, ordered, adjudged, and decreed that the aforesaid decree reversed,

27 and that the cause be remanded to this court, with directions to enter a decree that the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo be restored to the claimant, with damages and costs.

And the said mandate having further provided, to secure the carrying out of the said decree made by the Supreme Court on January 8th, 1900, and of the opinion delivered on the same day, according to their true meaning and intent, that the damages to be allowed shall be compensatory, and not punitive.

Now, on motion of Convers & Kirlin, proctors for the claimant, it is hereby ordered, adjudged, and decreed:

(1) That the said mandate be filed, and that the said judgment of the Supreme Court of the United States be and the same hereby is made the judgment of this court;

(2) That the libel herein be and the same hereby is dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs; the question whether such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages;

(3) That the clerk of this court do cause to be paid over forthwith to the proctors for the claimant, the amount of the proceeds of the sale of the said vessel, and of any sale of her cargo, now on deposit and subject to the cheque of this court;

28 (4) That it be referred, by request of the parties, to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court, with all convenient speed, the amount of the compensatory

damages to be recovered by the claimant herein, in conformity with this decree, and with the opinion and decrees of the Supreme Court herein.

JAMES W. LOCKE, *Judge.*

Approved as to form:

HENRY M. HOYT,
Assistant Attorney-General for the United States.
JOS. K. MCCAMMON,
JAMES H. HAYDON,
Of Counsel for Captors.

29 United States district court, southern district of Florida.

THE UNITED STATES, LIBELLANT,
against
THE SPANISH SMACK "PAQUETE HABANA" AND her cargo, Juan Pasos, claimant.
} Stipulation.

It is hereby stipulated and agreed between the United States the naval captors and the above-named claimant that upon the decree entered or to be entered by this court herein, providing that the proceeds of sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with compensatory damages and with costs, in accordance with the mandate of the Supreme Court of the United States in this case, such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, as to justice may appertain and as the legal responsibility therefor may appear; and that either party shall have the right to review the decree entered pursuant to the said mandate on the question of the amount of damages, and the United States, the naval captors or the claimant shall have the right to review such decree on the question whether the ultimate legal responsibility for such costs and damages rests upon the United States or the naval captors.

Dated, New York, February 2, 1900.

HENRY M. HOYT,
Assistant Attorney-General for the United States.
JOS. K. MCCAMMON,
JAS. H. JAYDEN,
Of Counsel for Captors.
CONVERS & KIRLIN,
Proctors for the Claimant.

30 (Endorsed:) United States district court. The United States, libellant, against the Spanish smack "Paquete Habana" and cargo, Juan Pasos, claimant. Interlocutory decree. Convers & Kirlin, proctors for claimant. Filed, Apr. 5, 1900. E. O. Locke, clerk.

31 United States district court, southern district of Florida.

Spanish schr. "Paquete Habana." Prize No. 9.

Clerk's statement.

Proceeds of sale deposited		$490.00
Paid fees prize commissioners and expenses	$33.02	
" " clerk	42.00	
" " marshal and expenses	293.29	368.31
Paid claimant under decree April 5th, 1900		121.69

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Paquete Habana." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

32 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES
vs.
SPANISH SMACK "PAQUETE HABANA" AND CARGO.

Ordered, that Joseph A. Springer, esqr., of Havana, Cuba, be and he hereby is appointed to take testimony in said case, and upon filing of interrogatories and cross-interrogatories by the counsel of parties interested herein, the clerk of this court issue commission in due form for that purpose.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., June 28, 1900.

(Endorsed:) U. S. district court, southern district of Florida. United States vs. Spanish smack "Paquete Habana." Order appointing commissioner to take testimony. Filed June 30, 1900. E. O. Locke, clerk.

33 UNITED STATES
vs.
"PAQUETE HABANA," JOSE PAZOS, CLAIMANT. } Prize.

Interrogatories to be propounded to Jose Pazos, a witness on behalf of claimant.

1st interrogatory. State your name, age, occupation, and place of residence, and where you resided during the months of April and May, 1898.

2nd interrogatory. State, if you know, who was the owner or owners of the Spanish fishing smack "Paqueta Habana," captured off the coast of Cuba, the latter part of April, 1898, by the United States Navy during the late war between the United States and Spain; and state, if you know, what was the value of said vessel at the time of her capture and state the facts upon which you base your valuation.

3ad interrogatory. State, if, you know, how much said vessel usually earned her owner or owners per month, and your means of information as to her earnings.

4th interrogatory. State whether the owner of said vessel has an agent in the United States duly authorized to represent him in this suit; if yea, state his name and place of residence.

5th interrogatory. If you know any other facts that would be beneficial to either party to this suit, please state them a' fully as if specially interrogated thereto.

J. M. PHIPPS.

34 *Interrogatories to be propounded to Juan Lluria y Pujadas, a witness for claimant.*

1st interrogatory. State your name, age, and occupation, and residence, and where you resided during the months of April and May, 1898, and prior thereto.

2nd interrogatory. If you should state, in answer to the first interrogatory, that you held an official position under the Spanish Government at Havana, Cuba, state whether you were required by virtue of said position to inspect and examine and value Spanish fishing smacks that entered the harbor of Havana; and, if yea, state whether during the month' of Apr. and May, 1898, or at any time prior thereto you inspected and valued a Spanish fishing smack "Paquete Habana" and what 'as the valuation that you placed upon said vessel, and state the facts upon which you based your valuation.

3rd interrogatory. If you know anything else that would be beneficial to either party to this suit, please state as fully as if specially interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimants.

35 *Interrogatories to be propounded to Francisco Gandon and Antonio Suarez, witnesses on behalf of claimant, to be answered by each separately.*

1st interrogatory. State your name, age, and occupation, and whether you resided in Havana, Cuba, during the months of Apr. and May, 1898.

2d interrogatory. State whether you bought and sold fresh and salted fish during the months of April and May, 1898, and whether you were familiar with the market prices of fresh and salted fish in Havana during said months. If yea, state the prices of each.

3d interrogatory. If you know anything else that would be beneficial to either party in this suit, please state as fully as if specially interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimant.

36 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"PAQUETE HABANA," JOSE PANOS, claimant. } Prize.

The libellant, by its attorney, objects to the fourth interrogatory upon the ground that it tends to elicit answers which are not pertinent to the issue.

First cross-interrogatory. How long have you known the "Paquete Habana?" State her gross and net tonnage. State when and where she was built.

Second cross-interrogatory. State, if you know, when and where she was purchased by her present claimant, and give the name and present place of residence of the person from whom the purchase was made.

Third cross-interrogatory. How much did the present claimant pay for said vessel? State how and in what the payments were made, whether in money or in other property, and if in the latter, state what it was. State at length and in detail all the facts connected with the purchase of said vessel.

Fourth cross-interrogatory. In what business was the vessel engaged from the time of her purchase by the present claimant up to the time of her capture

37 Fifth cross-interrogatory. If you state that she was engaged in the fishing business, state whether or not she was engaged in any other business, and if so, how long, and the nature thereof; state fully.

Sixth cross-interrogatory. State how the seamen operating said vessel were compensated, whether they were paid wages or a percentage on her earnings.

Seventh cross-interrogatory. State how many trips she made in the two years next preceeding her capture, give the date of departure and entry of each trip, the quantity of fish captured each trip, the amount realized from the sale of each cargo, what part of said cargo went to the owner and what part to the seamen.

Eighth cross-interrogatory. Did the owner keep books with reference to the business of this vessel? If yea, produce the same to the commissioners, and file with your answer to this interrogatory transcripts showing the receipts and disbursements of this vessel for two years next preceeding her capture.

Ninth cross-interrogatory. Give the names of the captains and mates of this vessel from the time she was first owned by the present claimant up to the time of her capture, and their present places of residence. Also give the names of the sailors or fishermen employed on this vessel for two years next preceeding her capture, and their present places of residence.

Tenth cross-interrogatory. State whether or not any repairs were made upon this vessel during the time she was owned by the present claimant, and if so give the dates when same were made, the nature and extent thereof, the names of the persons making the repairs, and the

38 amount paid on each occasion, if more than one.

JOSEPH N. STRIPLING,
United States Atty.

Cross interrogatories to be propounded to Juan Lluria y Pujadas, a witness for claimant.

The libellant objects to the second interrogatory propounded to Juan Lluria y Pujadas, upon the ground that said interrogatory does not seek information as to the competency of the witness to testify upon the subjects about which he is interrogated.

First cross-interrogatory. If, in answer to second direct interrogatory, you answer that you held an official position under the Spanish Government in Havana, state what it was.

Second cross-interrogatory. State whether or not you were required to keep records of the transactions of your office.

United States Atty.

Cross-interrogatories to be propounded to Francisco Gandon and Antonio Suarez, witnesses on behalf of claimant, to be answered by each separately.

The libellant objects to the second direct interrogatory addressed to Francisco Gandon and Antonio Suarez upon the grounds that the price of fresh fish and salted fish in Havana, during the month of April and May, 1898, during which time the said city was blockaded by the war vessels of the United States, should not be used as a basis for assessment of damages.

39 In the district court of the United States for the southern district of Florida.

THE UNITED STATES
vs.
"PAQUETE HABANA," JUAN PAZOS, CLAIMANT. } In prize.

Now come the captors by McCammon & Hayden, their proctors, and without admitting that they would be responsible for any costs or damages which may be awarded in this cause, enter objections to the interrogatories which the claimant proposes to propound to the following witnesses in the course of deposition to be taken under a commission directed to J. A. Springer, esq., of Havana, Cuba:

Interrogatories to be propounded to Jose Pazos, Francisco Gandon, and Antonio Suarez.

Third interrogatory. Objected to as incompetent, irrelevant, and immaterial, for the reason that it is provided by the decree of the Supreme Court of the United States entered herein that the damages allowed to the claimant shall be compensatory only. The usual earnings per month of the "Paquete Habana" in time of peace would not tend to show what sum she could have earned during the period covered by the war between the United States and Spain, when she would have been prevented from following her customary business by the blockade of Havana and other Cuban ports.

Interrogatories to be propounded to Francisco Gandon and Antonio Suarez.

Second interrogatory. Objected to as incompetent, irrelevant, and immaterial, for the reason that the market prices of fresh and salted fish in Havana during the month of May, 1898, and a portion of the month of April, 1898, during which the United States and Spain were
40 at war, can not be taken as a fair basis for determining the value of the cargo of this vessel, for the reason that the port of Havana was blockaded by a naval force of the United States during the said period, and the prices of food supplies were thereby greatly increased. The vessel, though not liable to capture, had no right to enter a blockaded port. The value of her cargo should be determined by the market prices of fish in ports not blockaded.

McCAMMON & HAYDEN,
Proctors for Captors.

41 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"PAQUETE HABANA," JOSE PAZOS, CLAIMANT. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Jose Pazos, Juan Lluria Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answers to make to all and singular the direct and cross interrogatories to said commission attached, depose and answer as follows:

I. To the first interrogatory the said Jose Pazos answers and says as follows:

My name is Jose Pazos; I am 35 years of age; I am a pilot of this port, and reside in this city at No. 2 Enna st. At the time questioned about I was in command of the Spanish fishing smack, "Antonio Castelerio," belonging to Manuel Suarez.

II. To the second interrogatory he answers and says:

Dona Tusta Galban, my brother Juan Pazos, and Manuel Pazos, and myself were the owners of said vessel. We three brothers owned one-half interest in her, and Dona Justa Galban owned the other half. The vessel was valued at the time of her capture at $4,500—Spanish gold. The valuation of said vessel was based upon her cost price, which was for our one-half—$2,400—and certain repairs made upon her, but the appraised value of the vessel had at the time of her capture was $4,500.

III. To the third interrogatory he answers and says:

42 The vessels of this class, and in the business in which she was engaged, usually gave a net result of 18 to 20% upon the amount of the capital. The vessel earned about $75 profit per month. My means of information are the monthly account of her gross earnings, which were kept by Vilar Senra & Co.

IV. To the fourth interrogatory he answers and says:

Yes, Mr. Ramon Alvarez, of Key West, Fla., is the attorney in fact, and duly authorized agent of the said vessel and owners.

V. To the fifth interrogatory he answers and says:

I have nothing particular to reply in answer to this interrogatory.

Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

I have known the said vessel some 18 or 20 years; her gross tonnage I can not remember, but I believe her net tonnage is 36 tons. She was American built, but I can not state when nor where she was built.

II. X. To the second cross-interrogatory he answers and says:

She was purchased in Havana about the year 1892. We three brothers bought out the one-half interest in the vessel, which Cesareo Xejas had with Dona Justa Galban. He now resides in Casa Blanca.

III. X. To the third interrogatory he answers and says:

We paid Mr. Xejas in cash $2,400 Spanish gold for this one-half. The usual deed or bill of sale was made out and recorded.

IV. X. To the fourth cross-interrogatory he answers and says:

The "Paquete Habana" was engaged in the fishing business.

V. X. To the fifth cross-interrogatory he answers and says:

43 She was always engaged in that business and no other.

VI. X. To the sixth cross-interrogatory he answers and says:

Vilar, Senra & Co. paid us for the live or fresh fish brought into the port by said vessel at the rate of $10 Sp. silver per quintal, of which two dollars was first deducted for an allowance for the shipowners, and of the remaining $8 two-thirds was given to the seamen or fishermen, leaving one-third for the owners. This vessel did not at any time bring salted fish.

VII. X. To the seventh cross-interrogatory he answers and says:

This vessel did not make probably more than 17 trips in the two years next preceding her capture. I can not state from memory the dates of departure and entry, nor the quantity of fish of each trip, but estimate this at 30 quintals on an average, nor the exact amount realized from the sale of the cargoes. These data probably appear particularized in the books kept by Vilar, Senra & Co. I have stated that one-third with a certain allowance went to the owners and two-thirds went to the seamen. Should it appear in the settlement of this case and in payment of any ward that any part thereof belongs to the seamen we bind ourselves and become responsible for the settlement and payment to them of same.

VIII. X. To the eighth cross-interrogatory he answers and says:

No books were kept by us with reference to the business of this vessel. I can not therefore produce and file any extracts to show receipts and disbursements. Each trip's business was liquidated at the moment.

IX. X. To the ninth cross-interrogatory he answers and says:

44 Juan Pazos was acting as "patron" or master at the time of her capture. Her former master from the time we owned her was Jose Casteleiro. Pazos now resides in Corunna, Spain. Jose Casteleiro and my other brother, Manuel Pazos, were employed on the vessel as seamen or fishermen at the time of her capture. There were then only the three on board. I can not state who were employed on the vessel previously; their names probably appear on the crew lists of the vessel, which I understand are on file before the court.

X. X. To the tenth cross-interrogatory he answers and says:
No repairs to any great extent have been made on this vessel beyond those stated as having been made upon her previous to her appraisement.

JUAN PAZOS.

Answered under oath and subscribed before me at Havana this 28th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 JUAN LLURIA Y PUJADAS.

I. To the first interrogatory, the said Juan Lluria Pujadas answers and says as follows:
My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation; I am also maestro mayor de bahia, or harbor master of this port; at the time mentioned April and May, 1898, and prior thereto I resided at the same place and with the same business.

II. To the second interrogatory he answers and says:
The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about thirty years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered the harbor of Havana, and especially all vessels that made repairs in this port. I have inspected and valued the fishing smack "Parquete Habana" to be worth on the first of March, 1898, $4,500 Spanish gold. Basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels made at the request of Messrs. Vilar, Senra & Co., Bengochea & Co., and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer and of which I now produce a copy (translated) of the part thereof referring to the "Parquete Habana," to be filed for convenience with this declaration "Exhibit A."

46 Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:
The position that I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:
No, I had no official records to keep, but made reports to the captain of the port, in the case of each vessel, respecting her inspection, valuation, expense of repairing, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana, this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, an expert appointed by Messrs. Vilar, Senra & Co., and Bengochea & Co., to appraise the value of their respective fishing smacks in the condition in which they were in the first day of March, of this year.

Do hereby certify that, owing to the constant inspection which I make of these vessels in my official capacity, the fishing smack "Paquete Habana," registered, folio 1996, of 28 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with necessary iron ballast, capstan, two anchors and chains, galley caboos and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition I appraise in the sum of $4,500 Spanish gold.

* * * * * * *

In testimony whereof I have issued this certificate at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

47 I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in the case of Antonio y Paco, and referring to the vessel named in this commission, the "Parquete Habana."

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT A.

At the execution of a commission for the examination of witnesses between the United States vs. The "Parquete Habana," Jose Pazos, claimant, this paper marked "Exhibit A," was produced and shown to the witness Lluria Pujadas and by him deposed unto and subscribed at the time of this examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON.

I. To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided at Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish were sold at Havana during said months at $10 (ten dollars), Spanish silver, per quintal, and fresh fish were sold at the same price, $10 (ten dollars), silver, per qq. These were market rates.

III. To the third interrogatory he answers and says:

48 Before the blockade was declared, fresh fish were sold at $7 (seven dollars), silver, per quintal, and salted at $3.50 to $4 (three and one-half to four dollars), silver, per quintal. These prices gradually rose, as soon as the blockade was declared, to $10, silver, per quintal. Live or fresh fish were never lacking, as it was supplied from the South coast via. Batabano, while salted fish became very scarce.

FRCO. GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ.

I. To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra & Co. That was my occupation at the time mentioned in April and May, 1898, and I resided then, as now, in this city at No. 2 Enna st.

II. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish and salted fish and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898. The prices at that time were $10 (ten dollars), silver, per quintal of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars), Spanish gold, per quintal.

III. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During previous years the usual market price of live

49 or fresh fish was $7 (seven dollars), Spanish silver, per quintal, and for salted fish from three to four dollars, Spanish silver, per quintal. On account of the blockades established by the United States about Apirl 21st, the price of fresh fish gradually rose to the price that I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana, this 25 day of Aug., 1900.

JOSEPH A. SPRINGER.

CITY OF HABANA, *Island of Cuba.*

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Jose Pazos Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on the said oath answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respectfully made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof, I have hereunto set my hand and affixed my seal at the city of Havana the 29 day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"PARQUETE HABANA," JOSE PAZOS, CLAIMANT. } Prize.

To Joseph A. Springer, commissioner, Dr.

For taking testimony of witnesses in above cause, interpreting, etc..... $20.00

Havana, August 29, 1900.
Received payment from claimant's attorney.

JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) The United States vs. "Paquete Habana," Jose Pazos, claimant. Commission. The execution of the within commission appears in a certain schedule hereto attached. Havana, Aug. 29, 1900. Joseph A. Springer, commissioner. Filed Sep. 3, 1900. E. O. Locke, Clerk.

51 In the United States district court, southern district of Fla.

In re fishing smack cases.

JOHN F. HORR, being duly sworn, on behalf of the United States testified as follows:

Q. What position did you hold under the United States, if any, in the month of June, 1898?

A. United States marshal.

Q. For the southern district of Florida?

A. For the southern district of Florida.

Q. Were you acquainted with the Spanish fishing smack "Quatro de Septembre?"

A. Well, she was a prize brought in there. I saw her.

Q. Did you sell her?

A. Yes, sir.

Q. In a condemnation sale?

A. Yes, sir.

Q. State what she brought, please.

(Objected to as immaterial and irrelevant, and as not affording the proper measures of damages in this case.)

By COMMISSIONER. I will state, Mr. Stripling, that I will take cognizance of what they brought as a matter of record.

A. Four hundred and seventy dollars.

Q. Where have you resided, Captain, most of the time since the civil war?

A. In the United States; the last twenty-five or thirty years in Florida, at Key West.

Q. Have you ever owned any sailing vessels?

A. Yes, sir; small sailing vessels.

52 Q. How many?

A. I have been interested in six or more vessels; have owned, built, and partly owned six or more.

Q. Captain, have you kept yourself posted, during your residence in Key West, of the value of vessels of the character of the "Quatro de Septembre?"

A. I wouldn't like to say that I have. She is a fishing smack, and a class of vessel I haven't had anything to do with.

Q. You saw her?

A. Yes, sir; small vessel.

Q. No material difference between that vessel and any other sailing vessel of the same type, except for the fact that she had a well in her?

A. Yes; she had a well.

Q. Does that add very materially to the cost of a vessel?

A. It would some.

Q. I am talking about the cost of construction.

A. I don't know; cost more, I suppose. How much more I would not like to say.

Q. About what percentage would you estimate it would cost more than an ordinary vessel?

(Objected to. Captain Horr says that he has had no experience in it.)

Q. From your knowledge of the construction of boats generally, would a vessel of this character necessarily be more expensive in constructing?

A. Yes; I think so; a little.

Q. What percentage would you say?

(Objected to on the ground that no sufficient foundation laid.)

A. I don't know.

Q. Captain, can you give an estimate based on figures and a knowledge of boats, so as to be reliably an estimate?

think it would be a reliable estimate.

53 Q. Well, from the appearance of this vessel, and the examination you made of it while she was in your custody, what would you consider a fair valuation for her?

(Objected to on the ground that the witness has stated that he has had no experience with fishing-smack vessels and their values, and that there has been no statement of the witness as yet that he has made a sufficient examination of the vessel upon which to form the ground for an expert opinion.)

Q. State what kind of examination you made of her, Captain.

A. I don't recollect that I made any particular examination of her. I examined some of them, and went into their hold, but can't remember

which ones. I recollect one that I made a pretty thorough examination of.

Q. These parties value their vessel at $5,000.00. From her appearance at the time she was in your possession, what would you consider a fair valuation for her?

(Objected to on the ground that the value of this vessel is to be determined upon the fact that this vessel was a Spanish or Cuban fishing vessel. Objection sustained; to which ruling counsel for the Government excepts.)

A. I would say one thousand dollars at the outside for that vessel. It is pretty fair to assume that she would not bring any more than that, or those fish men around there would have got her.

(Motion to strike the answer, on the ground that no proper foundation has been laid for the question, and the further ground that the value at Key West, of which the witness speaks, is improper and irrelevant. Motion is granted; to counsel for the Government excepts.)

Q. You have stated that one thousand dollars, in your opinion, would be a fair valuation for this vessel. Now state fully upon what you base that estimate.

54 (Same objection.)

A. According to her age and condition at the time of sale and the price that she sold at.

Q. State whether or not she was a newly built vessel.

A. My impression is that she was one of the old boats.

Q. Do you know what the cost per ton to build a vessel of that kind is?

(Same objection.)

A. No; I do not. I know what it would cost per ton at Key West. Know what I have had them offer to build for me for.

Q. About how much?

(Same objection.)

A. I know of one contract which was let at ninety dollars per ton for building a wooden vessel. Now, that ninety dollars does not mean running, rigging, anchors, chains, etc.

Q. Now, do you remember the "Poder de Dios?"

A. Only in a general way.

Q. How much did she sell for?

(Same objection.)

A. My recollection is, a little over a thousand dollars—a thousand and ten dollars, she sold for.

Q. She is valued by the owner at four thousand dollars. Do you consider that a fair price for her?

(Objected to as immaterial and irrelevant as applied to American vessel value, and also because sufficient foundation has not been laid for the question.)

A. I consider it excessive, estimating the value in this country.

Q. What would you consider a fair price for her, from your recollection of her condition?

(Same objection.)

A. Now, I suppose you mean to Key West, do you?

Q. Yes, sir.

55 A. I would say twenty-five hundred dollars. I don't recollect the exact condition of this boat—some of them were run down, and some were in pretty good condition—it is hard for me to distinguish at this time.

Q. You sold the "Espana," didn't you?

A. Yes, sir.

Q. This vessel is valued by the owner at nine thousand dollars. State from your present knowledge of her condition whether you consider that excessive, and what you would consider a fair valuation for her.

(Same objection.)

A. I consider nine thousand dollars excessive. She was a Cuban-built boat and at that time fourteen years of age, and I consider three thousand or thirty-five hundred dollars a fair valuation.

Q. How much did she sell for when you sold her?

(Same objection.)

A. Thirteen hundred and ten dollars.

Q. The "Paquete Habana," she is valued at forty-five hundred dollars by the claimants in this case. From your present recollection of her appearance and condition, state whether or not this is excessive, and if so, what, in your opinion, would be a fair valuation.

(Same objection.)

A. The "Parquete" was a small sloop smack; I don't recollect about her age. I knew about her age at that time, but don't recall now. She sold for four hundred and ninety dollars. Considering her age and size I would think fifteen hundred dollars would be a fair valuation for her.

Q. The "Oriente," according to this testimony, is forty-six and fifty one-hundredths tons. Do you remember that vessel?

A. No; I don't remember her particularly. She was one of

56 the largest.

Q. She was valued at five thousand dollars. State whether or not you consider that a fair valuation.

A. Considering her age, I consider it excessive.

Q. From your recollection of the age and condition of the boat, what would you consider a fair valuation?

(Same objection.)

A. It is a difficult matter for me to remember the condition the boat was in. I can't possibly place a valuation, on account of not recalling her condition.

Q. Did you sell the "Engracia?"

A. Yes, sir.

Q. What did she bring?

(Objected to as immaterial and irrelevant and not constituting a proper measure of damage.)

A. Sold for one thousand dollars.

Q. The claimants to that vessel value her at five thousand five hundred dollars. From your present recollection of that vessel, and her condition, state whether or not you consider that a fair valuation; and if not, what would you consider such.

(Objected to as immaterial and irrelevant as far as regards value at Key West, and further on the ground of insufficient foundation has been laid for the question.)

A. I consider five thousaud and five hundred dollars excessive, but can not recall the condition of the vessel sufficiently well to estimate her value at Key West, further than the price realized at the sale.)

Q. How much did she bring?

(Same objection.)

A. One thousand dollars.

Q. Did you consider the price that she brought at that time under her real value; and if so, how much?

57 (Same objection.)

A. I can not recall well enough.

Q. Do you remember the "Santiago Apostel?"

A. Yes, sir.

Q. According to the testimony here she appears to have been built in 1890; and if valued at one thousand dollars, state whether or not you consider that a fair valuation.

(Same objection.)

A. I consider it excessive in Key West.

Q. What would you consider a fair valuation for her, assuming that she was built in 1890 and cost nine thousand and eighty dollars originally?

(Same objection.)

A. I would consider five thousand dollars about her value in Key West.

Q. How far is Key West from Havana?

A. Eighty-five miles.

Q. "Antonio Suarez." This vessel is valued at ten thousand dollars Spanish gold. You sold the "Antonio Suarez" also?

A. Yes, sir.

Q. How much did she bring?

(Objected to as immaterial and irrelevant and as not affording a proper measure for damage.)

A. Twelve hundred and sixty dollars, she sold for.

Q. State whether or not you consider that a fair valuation.

(Objected to as irrelevant and immaterial and not affording a proper measure of damages. To avoid a repetition of the objections, it is understood that the objections to the prices realized for the boats in Key West is taken subject to the objection of counsel for the claimants; that

58 said objection is that the testimony is immaterial and irrelevant and does not afford proper measure for damages, and that the opinion of the witness as to the valuation of vessels in Key West is immaterial and irrelevant and does not afford proper measure for damages; and that the proper foundation has not been laid for the formation of an expert opinion. It is understood that the same rulings and exceptions are deemed to apply in each case.)

A. I consider it excessive; considering her age and everything, three thousand dollars at the outside.

Q. Captain, the "Serverita" is valued at eight thousand dollars. State, from your present recollection of the boat and her condition, whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive.

Q. What would you think a fair valuation?

A. I can't recall her condition well enough to place a valuation on it.

I would say the eight thousand dollars excessive, from her tonnage and her age. Her tonnage could be rebuilt at Key West for much less.

Q. Did you sell the "Fernandita?"

A. Yes, sir.

Q. How much did she bring?

A. Five hundred dollars.

Q. The "Fernandita" is valued at five thousand and five hundred dollars by the present claimants. State whether you consider that excessive.

A. Very much so, sir.

Q. What would you consider a fair valuation for her?

A. I don't recall her condition well enough to place a valuation on her.

59 Q. You sold the "Lola," did you?

A. Yes, sir.

Q. How much did she bring?

A. Eight hundred thousand dollars.

Q. She is valued by the present claimants at five thousand dollars; state whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive in the United States, in Florida and Key West, because I know such a vessel could be built for considerably less money.

Q. "Antonio y Paco," this vessel is valued on the first of January, 1898, by the present owners, at eight thousand two hundred and fifty dollars. State from your present recollection of her condition whether or not you consider that a fair valuation.

A. I do not; I consider it excessive.

Q. What would you say was a fair price for her?

A. Taking into consideration the prices that boats sold for that were taken to Havana, I would consider thirty-five hundred dollars a fair price for that vessel. I make this answer, believing that this vessel was formerly the "Emma Lowe."

Q. Have you any knowledge of what it cost to build the "Emma Lowe" in Key West?

A. My impression is that John Lowe said that she cost him five thousand dollars—or it may have been a little more than that. After several years he sold her for thirty-five hundred dollars.

Q. Did he sell her on account of depreciation or the tariff on the fish business?

A. I assume that it was on account of the fish tariff.

Cross:

Q. Captain, all of the values that you have given with reference to the different vessels have been values at Key West?

A. Yes, sir.

60 Q. You don't propose, as I understand it, to speak of values in Havana?

A. No, sir; don't know anything about them, other than what I have known them to pay for vessels coming over to Key West.

Q. Do you know anything about exchanging or transferring a foreign vessel to the Cuban flag, and obtaining license to engage in the fishing business in Havana?

A. No, sir.

Q. You have carried in your mind—I judge from the figures you have given—a notion that boats can be duplicated in Key West, Fla., at about ninety dollars a ton?

A. Yes; that is what they offer to build at.

Q. Now, these offers to build, in respect of which you have testified, have not been for the building of fishing vessels, have they?

A. No, sir.

Q. Are you speaking of ordinary smacks?

A. Yes, sir.

Q. Now, it is a fact, is it not, that the bulkhead of these tanks have to be made practically as strong as the vessel, and that the location of a tank in a vessel interferes with the placing of the beams as they would be placed if there were no tanks?

A. No; not the beams, but it is the ribs; the fore and aft stringers and the ribs.

Q. And the strength which would otherwise be obtained from braces, which have to sacrificed in a construction of tanks, must be provided for in some other way in the construction of a fishing boat?

A. Yes, sir.

Q. Then would this not add to the cost of construction?

A. Yes; I think it would cause a certain difference in the cost
61 of construction.

Q. Of which you do not advance any opinion?

A. Other than in a general way.

Q. Without any experience as to the building of fishing boats?

A. No, sir; none whatever as to fishing boats. I have built a sloop and rebuilt a vessel or two, but have never built any smacks.

Q. Now, Captain, in placing these values of the different vessels at the figures that you have given, where you have given figures, you have not been informed as to whether the boats have been repaired, rebuilt, or overhauled in Cuba, and I understand you to say you have made no special examination of the construction of most of the boats?

A. With the exception of two, I made no careful examination.

Q. The employment of boats of this class from Key West would no longer be profitable, would it?

A. No, sir; not with the laws that they had at that time.

Q. When did the change in the laws to which you now refer take place?

A. I think it must have been in 1897 or 1898.

Q. And about that time were all boats of that class that were then under the American flag go out of business?

A. I think they did.

Q. What was the change of law?

A. Well, I always supposed it was on account of an import duty put on fish over in Cuba.

Q. These changes of law you speak of were in Cuba?

A. Yes, sir.

Q. When the American fishing boats of that class were engaged in the fishing business, what was their principal market?

A. Havana.

Q. And it was some discriminating restrictions that were imposed there that drove them out of the business?

A. Yes, sir; either port duties or duties on fish.

62 Q. Now, Captain, it is a pretty difficult matter, is it not, to form much of an opinion of the value of a boat, built some years ago, when you do not know how well she has been kept up and rebuilt and repaired?

A. Yes, sir; a man who is not familiar with a boat's construction, it is pretty hard to get at her value.

Q. Some old boats when rebuilt are practically as good as new, are they not?

A. I think so; yes, sir.

Q. Now, prior to the time that my learned friend here requested you to come in and express your opinion of these boats, have you turned these questions over in your mind since you sold them three years ago?

A. No, sir.

Q. And the opinions that you have expressed were those that occurred to you at the moment of your examination, without any previous examination?

A. Yes, sir.

Q. At the time you saw the boats, and sold them, you were marshal of the court for this district?

A. Yes, sir.

Q. Are you still the marshal for this district?

A. Still the marshal of this district.

Q. What became of the fish that the boats had on, do you know?

A. Well, quite a number were distributed to the crews of these vessels and some were given to the revenue cutters, and a good many died and were dumped overboard.

Q. The vessels were in custody quite a long time before they were sold, were they not?

A. Yes, sir; they were sold the 27th of June, if I recollect. They were there, the last ones, a month and a half.

63 Q. There was no sale of any fish, was there?

A. No, sir.

Q. There is nothing on the records to show any returns or proceeds of the fish?

A. No, sir; we thought of trying to sell them, but there was no market for the fish then, so we distributed them.

(Endorsed:) United States vs. Sloop "Paquete Habana." In re fishing smacks. Evidence taken before Commissioner E. O. Locke. Filed August 6th, 1901. E. O. Locke, clerk.

64 In the district court of the United States, southern district of Florida. In admiralty.

UNITED STATES OF AMERICA *vs.* "SEVERITA," "SANTIAGO APOSTOL," "FERNANDITO," "ESPANA," "PODER DE DIOS," "ANTONIO SUAREZ," "ORIENTE," "CUATRO DE SEPTIEMBRE," "ANTONIO Y PACO," "LOLA," "ENGRACIA," and "PARQUETTE."	Claims by owners for compensation.

The examination of witnesses de bene esse beginning on the 7th day of October, 1901, on behalf of the United States, before me, Beverly B.

Whalton, county judge of Monroe County, Florida, at my office in the city of Key West, in said county, in the above entitled cause.

It is hereby stipulated and agreed by and between counsel for the United States and the claimants, respectively, that the testimony hereto appended and taken as aforesaid may be written and transcribed by a stenographer; and that the several signatures of the respective witnesses whose testimony is hereto appended, are severally waived.

I. A. ZACHARIAS,
Assistant U. S. Attorney.
J. M. PHIPPS,
Of Counsel for Claimants.

65 SAMUEL CATES, Esq., a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, place of residence, and occupation.

A. Samuel Cates; age, 54 years; live up in James street, city of Key West; occupation, the sponge business.

Q. How long have you been engaged in the sponge business?

A. I guess about 20 years.

Q. Are you familiar with the selling of vessels and the values thereof?

A. Yes, sir; I know all about it.

Q. What opportunities have you had for observing the selling of vessels and becoming acquainted with the values thereof?

A. Well, in buying and selling, and etc.

Q. You have traded in vessels for some years?

A. Yes, sir; I have.

Q. Do you know the fishing smack "Espana," seized as prize in the late war?

A. Yes, sir.

Q. Did you make an examination of that boat?

A. I did, after I bought it.

Q. About when was that?

A. I could not answer.

Q. Approximately, when?

A. Somewhere about the time the Spanish-American war was declared I bought it and examined it.

Q. You say you bought the "Espana?"

A. Yes, sir.

Q. What did you pay for her?

A. I paid $1,310.00 for her.

66 Q. What was the result of your examination of said vessel?

A. Well, in examining her I found that the vessel was in a pretty bad condition, the hull and some of her sails.

Q. Was the price you paid for her a fair value?

A. Well, no, sir; I didn't think it was a fair value. I thought the vessel was worth more than she brought. Well, I offered to sell it to the owners for $3,500. They would not give that much money.

Q. What did you sell it for?

A. For $2,500.

Q. About what was her tonnage?

A. Was 53 tons when I bought it. Afterwards she was cut down some and remeasured to 48 tons.

Q. What repairs did you put on her before selling her?
A. Well, I don't know about how much repairs I put on her.
Q. State what they were.
A. Well, I had some pieces put into her planks and I had some timbers put on her bow. I think that was about all the repairs I had done.
Q. You say her hull was in a fair condition?
A. Yes, sir.
Q. Under what circumstances was this vessel purchased by you?
A. Well, she was taken by ships, I believe, and brought here, and she was sold by the Government, and I bought her at public auction.
Q. Was there much bidding at this?
A. Yes, sir; there was considerable bidding.
Q. Were there many persons present?
A. There were a considerable number of persons present at the time of the auction.
67-68 Q. Were those persons interested in vessels of this class?
A. There were some in that business and there were lots who were not.
Q. This you say was at the sale made by the marshal at public auction?
A. Yes, sir.
Q. That is when you bought this vessel?
A. Yes, sir.
Q. Did you at that time examine the vessel called the "Oriente"?
A. No, sir; I did not.
Q. About how old was this vessel when you purchased her?
A. I could not say.
Q. What price did you pay for her?
A. $1,310.
Q. And you sold her for $2,500?
A. Yes, sir.
Q. About what did the repairs cost, and did you do them yourself?
A. No, sir. Well, all the repairs I had done to her cost from $150 to $200.
Q. Would you say that she was in much better shape after you repaired her than before?
A. Yes, sir; I say she was in a little better shape than when I bought her.
Q. Would you say such repairs increased her value materially?
A. It increased the value a little.
Q. About how much would you say?
A. Well, I say, according to what I had done, about $150 or $200.
Q. No more than the actual amount you expended on her?
A. No, sir.
69 Q. Did you know if anyone else than yourself bid on said vessel?
A. Yes; several bid on her.
Q. Were you the highest bidder?
A. Yes, sir.

Cross-examination:

Q. What kind of vessel was this and what was she employed in?
A. In the smack business.

Q. When you say she was employed in the smack business, do you mean to say the fishing-smack business?

A. Yes, sir.

Q. Have you ever been engaged in buying and selling fishing smacks?

A. No, sir.

Q. Do you know, Mr. Cates, when the tonnage of the "Espana" was reduced here from 58 tons to 48 tons?

A. It was somewhere about that time; I can not remember rightly when she was taken and brought here.

Q. When was she remeasured?

A. When she was measured here she was 48 tons; I don't know anything about that part of it.

Q. Do you know whether there is any difference between the Spanish rule of measuring vessels and the American rule?

A. No; I don't know that there is any difference.

Q. Had this vessel, the "Espana," been cut or reduced before she was measured at Key West by the custom-house authorities?

A. No; she was measured before she was cut down.

Q. Was there any fishing-smack business being carried on
70 between the United States and Cuba at the time or about the time you purchased this vessel?

A. No, sir; there were no smacks here at this time, excepting the smack we bought.

Q. At the time of that sale, of which you have spoken, was there any demand at Key West for fishing smacks?

A. Well, at that time, when we bought these smacks, of course we thought there would be a demand for them, but there was none up to that present time.

Q. Is it not a fact, Mr. Cates, when vessels are sold here at public auction, are there not always a large crowd present?

A. Yes, sir; there most generally is.

Q. To whom did you sell that vessel?

A. I sold it to the same owner that it belonged to before.

Q. What did you get for her?

A. I got $2,500.

Q. Why did you sell it?

A. Because I had no use for it.

Q. Did you buy her for speculation?

A. No, sir; I did not buy her for speculation; I bought her with the intention of keeping her.

Redirect:

Q. You said there was no demand for such vessels; you also said there was quite a number of bidders?

A. Yes, sir.

Q. Please explain.

71 A. At that time, I can explain, that before these smacks had come here we had no demand for them, but when he bought these smacks we bought them with the intention of keeping and using them here. It happened to be there was no demand in that business, so afterwards we could not do anything with them and sold them.

Q. Then your intention to use them for fishing purposes did create a demand for such vessels?

A. Yes, sir; at that time.

Q. By that time, you mean the time of the purchase?

A. Yes, sir.

Q. Was the war still going on at the time of your purchase?

A. No, sir; the war was over.

Q. You said, in cross-examination, that there is always a crowd present in Key West at the selling of vessels, is that not due to the fact that a large number of people in Key West buy, sell, and trade in sailing vessels?

A. Yes, sir.

WILLIAM D. CASH, a witness in behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. State your name, age, residence, and occupation.

A. William D. Cash; age, 66 years; residence, Key West; occupation, a merchant.

Q. Mr. Cash, are you acquainted with the values of sailing vessels of a similar class?

A. Yes; I am, for the reason that I have bought and sold them during my business career.

72 Q. Do you recollect the sale of the twelve fishing smacks seized as prizes of war during the Spanish-American war?

A. I remember the sale of the fishing smacks; as to the number I do not know?

Q. State, if you recollect, the date of that sale?

A. I do not recollect.

Q. Do you know the fishing smacks known as the "Poder de Dios" and the "Antonio y Paco?"

A. Yes, sir; I know those two as sold.

Q. Did you, or the firm of which you were a member, purchase the smacks just named by me?

A. The firm of Cash & Curry purchased the smacks "Antonio y Paco" and "Poder de Dios."

Q. At what prices?

A. "Antonio y Paco," $1,910; and the "Poder de Dios," $1,010.

Q. Did you, prior to the purchase or subsequently, ever make an examination of said vessels for said firm?

A. A few days prior to the sale Mr. Curry and myself went on board of these smacks, made an examination as to their condition and what we thought was their value for purchase.

Q. State what you found to be the condition of said vessels from your examination.

A. From examination we found that the two vessels were in a very fair condition; one of them, the "Antonio y Paco," was of more value than the "Poder de Dios," then we determined when the sale came off what prices we would pay for one and the other.

73 Q. From your knowledge of the values of sailing vessels, would you say that the prices paid by you, for each vessel, respectively, were the fair purchase prices?

A. We concluded, at least we set a price that we thought each one was worth, and at the time of the sale probably the whole brought less than we expected to pay for them as a matter of speculation if the fishing business opened to them.

Q. Then, I understand you to say, that you paid, approximately, the prices which upon examination you had concluded would be fair purchase prices for your purposes?

A. Over, either for speculation or put them into the business.

Q. Did you sell those vessels?

A. We sold them.

Q. At what prices?

A. We sold the "Antonio y Paco" for $2,900, and we sold the "Poder de Dios" for $1,500.

Q. Do you know the amount expended for repairs on said vessels?

A. I do not know from memory, but can tell.

Q. From the books?

A. I can tell exactly from the books.

Q. Was there any competition at the sale of these vessels?

A. Yes, there was considerable competition.

Q. When you examined these vessels did you find that any repairs would be necessary to put them in proper condition for use of sailing?

A. To change the speculation we found that it would be necessary to make some repairs, but for matter of sailing we had not considered that proposition whether we should repair them or not, if so it would be necessary to make some repairs.

74 Q. Do you recollect the tonnage?

A. I do not know.

Cross-examination:

Q. Have you ever been engaged in buying and selling fishing smacks?

A. Yes, sir.

Q. You say in your direct examination that you bought these vessels for speculation, or for the purpose of engaging in the fishing business if that industry should be revised?

A. Yes, sir.

Q. When did you sell these vessels?

A. We sold them a short time after. Mr. Curry sold the vessels while I was away.

Q. Owing to the fact that such sales are largely attended, did not the persons who attended these sales usually pay more or less for vessels of any kind that may be offered for sale?

A. Well, at the time of sale there is, of course, quite a large number of people gathered there. Some are lookers-on and some are bidders; it is pretty hard for me to tell whether they were bidders or lookers-on. At the time of bidding I think competition was pretty lively.

Mr. MILTON CURRY, a witness on behalf the United States, being first duly sworn, testified as follows:

Q. Please state your name, age, place of residence, and occupation.

A. Milton W. Curry; age, thirty-four years; residence, Key West; occupation, a merchant.

Q. How long have you resided in Key West.

A. Thirty-four years.

75 Q. Have you any opportunities for observing the selling of vessels and becoming familiar with the values thereof?

A. Yes, sir.

Q. Have you bought and sold sailing vessels?

A. No.

Q. Have you come in contact or had opportunities to know the facts of purchases and sales of vessels?

A. Yes; I know the prices paid for some smaller-size sailing vessels under a hundred tons.

Q. Which do you recollect, the sale by the United States of the twelve (12) fishing smacks, seized as prizes of war?

Q. Do you recollect when?

A. It was in the summer of 1898.

Q. Do you know of the fishing smacks "Severita" and "Lola Engracia"?

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you at or near the time of purchase make examination of said vessel?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels, and the information I received was from the crew who were on the vessel at the time of seizure.

76 Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

Q. What did you pay for said vessels?

A. $800 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the age of the vessels at previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing, in reference to their use?

A. I thought that under a change of government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00, the "Severita" for $3,000.00.

Q. After your purchases of them did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas and I put some repairs on them, I suppose, between $50 or $100. I really don't know the estimate. The other repairs were ordinary such as any other vessel requires in ordinary use, such as painting and etc.

Q. Did these vessels require all these ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked; I made the repairs on her.

Q. Was the "Severita" painted when you sold her or any other repairs done outside?

A. Nothing that I know.

77 Cross-examination:

Q. Mr. Curry, did you ever buy or sell any fishing smacks, other than those you have testified to?

A. No, sir.

JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. John Lowe, residence Key West, occupation a merchant.

Q. Have you had opportunities for observing the selling of vessels and becoming familiar with the values thereof?

A. I have.

Q. Have you bought, sold, or traded in sailing vessels?

A. I have.

Q. For what number of years?

A. I have for about thirty years.

Q. Do you recollect the sale of the fishing smacks by the Government?

A. Yes, sir.

Q. About when was that made?

A. I don't recollect the date.

Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"

A. Yes, sir.

Q. Did you make an examination of those vessels at the sale?

A. No, sir.

Q. Did you purchase those vessels?

A. Yes, sir.

Q. What prices did you pay for them, respectively?

A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."

78 Q. Upon what did you base your value?

A. I merely went to the auction on the day of sale out of curiosity and when those vessels were offered I thought the prices reasonable and I purchased them.

Q. Did you examine them after the sale?

A. Yes.

Q. What did you find their condition to be?

A. Medium fair.

Q. Did you make any repairs on them?

A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.

Q. Did you sell them subsequently?

A. Yes, sir; the "Cuatro de Setiembre" was sold for $1.500 and the "Lola Engracia" for $2,000.

Q. At the time of the purchase by you, would you say, from the condition of the vessels, were the prices paid by you fair?
A. One of them I thought was fair.
Q. Which one?
A. The "Lola Engracia," the "Cuatro de Setiembre" was sold cheap.
Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?
A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?
A. I do not recollect. About the same time they were all sold to a party, or near the same time.
Q. All disposed of at the same time?
A. Yes, sir.
79 Q. Did you know how these two vessels were equipped, and what was their special equipment?
A. As fishing smacks.
Q. Did you know what was their dimensions when you bought them?
A. Not at the time I bought them.
Q. Whom did you sell them to?
A. To parties in Havana.
Q. Now, at the time of this public sale, was there any demand for fishing smacks at this port?
A. I don't think there was.
Q. What did you base your estimate of the valuation of these two vessels on, your own knowledge or from information obtained from others?
A. One of the vessels I know had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.
Q. Have you ever had fishing smacks built for yourself in Key West; and if so, what was about the cost of building such vessels?
A. I had two built, the "Emma Lowe" and "City of Havana;" each cost me about $10,000.
Q. What was their tonnage?
A. 49 tons.
Q. Was there any fishing-smack business going on at the time of the sale?
A. There was not then.
Q. Mr. Lowe, for what purpose did you purchase these two vessels?
A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?
A. There were several bidders and a little competition.
80 Q. How soon after you purchased these vessels did you make your examination of them?
A. I went on board the same day and put them on the dock about a week afterwards.
Q. Do you recollect the tonnage, approximately?
A. The "Cuatro de Setiembre" 29 tons, and the "Lola Engracia" 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or twenty years old; the "Cuatro de Setiembre," I don't know her age, I should judge she was about ten years old.

Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten years, fifteen years, or twenty years?

(Objected to on the grounds that it has been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. State your name, age, place of residence, and occupation.

A. Alfred Atchison; age 42 years; residence Key West; occupation seaman.

Q. How long have you been following that?

A. Twenty-two years.

Q. Are you familiar with sailing vessels?

A. I am—sailing vessels under 100 tons.

81 Q. In the course of your occupation and observation, have you become familiar with the value of sailing vessels?

A. Yes, sir; pretty well.

Q. Do you know the vessel "Santiago Apostol?"

A. Yes, sir.

Q. Do you recollect the sale of said vessel by the United marshal?

A. Yes, sir.

Q. Do you recollect the time of that sale?

A. I think it was in 1898?

Q. Did you purchase said vessel?

A. I purchased her.

Q. Did you, at or near the time of your purchase, make an examination of the "Santiago Apostol?"

A. I did.

Q. State what you found her to be.

A. She was in good condition.

Q. State, Mr. Atchison, her tonnage.

A. I don't exactly what her tonnage was. She had to be remeasured.

Q. Will you state, with reference to the different purchases, what condition you found her to be in—the helm, masts, rigging, and etc.?

A. The helm was in good condition. Well, everything else was in a pretty good condition, excepting her mainsail was not in a good condition, but we had used it two or three trips.

Q. Then you repaired her?

A. Made some repairs.

Q. From your knowledge of the value of sailing vessels, what would you say was her value at the time you purchased her?

A. All that depends on condition.

82 Q. Well, what would you consider at that time a fair market value at the time you purchased her?

A. At that time, well, on speculation, I suppose about $5,000, she would have brought from the business which I expected to go into when I bought her she would have been worth more.

Q. What did you pay for her?

A. $2,700.

Q. What did you sell her for?

A. $4,000.

Q. Did you consider that a good and fair price for her?

A. Yes, sir; under the circumstances.

Q. Did you get all that you could for her?

A. No; I don't think so.

Q. Then you took less than you could have gotten for her?

A. Yes, because I complicated myself so that I had to sell.

Q. O, I understand you to say that you could have sold to either one of two parties, and choose the one who would pay the lesser amount?

A. I could not choose.

Q. To whom did you sell?

A. I sold to parties in Havana.

Q. Did you make any other repairs besides that of the mainsail?

A. Some other repairs which we had damaged ourselves.

Q. Did you at or about that time examine the boat "Oriente?"

A. Yes.

Q. Did you know her condition?

A. Yes.

Q. About what would you say she was worth?

A. I should judge she was worth about $3,500; I mean this conditionally; I mean that if the Cuban markets were open to us, the vessel was worth more; I state if the Cuban markets were closed to us, she was worth what you could sell her for.

83 Q. Cuban markets, for what do you mean?

A. For fishing business.

Q. Have the Cuban markets been open to the fishermen of this country since?

A. No; not that I know of.

Q. Then that vessel has not been worth the sum you stated since that time?

A. No; I don't suppose she was.

Q. Could you not give any idea what she is worth here?

A. I suppose about $2,500 or $3,000.

Q. Mr. Atchison, what was your occupation in the early part of the year 1898?

A. I was deputy marshal.

Q. As deputy marshal did you have the fishing smacks in your care or custody?

A. Yes, sir.

Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast, and sail?

A. I did, sir.

Q. What was the result?

(Objected to as not being proper cross-examination, except in so far as the question refers to the two vessels referred to in the examination in chief.)

A. All were in generally good condition, except one.

Q. Well, from the examination which you made of the "Oriente," what did you consider to be her value?

A. Well, I consider there are other considerations. If the market were free to us to sell fish in Cuba, the vessel would have been worth $2,500, to my opinion; not opened to put her on speculation.

84 Q. I understand you to say here that all the vessels were in a good condition?

A. Fair as regular vessels are—as vessels are generally.

Q. Was there any fishing-smack business carried on at Key West with Cuba at the time of this public sale?

A. No.

Q. Do you know whether there was any demand at that time in Key West for fishing smacks?

A. No.

Q. What become of all these vessels?

A. They were all sold back to the people in Havana.

Q. What value were they to the people in the United States if they could not use them in the fishing business?

A. Well, there were some other uses they could have been put to.

Q. Can you estimate the value?

A. No; because there is no business of that character going on between Cuba and the United States.

Q. Did you ever have any fishing smacks built for your own use?

A. No.

Redirect examination:

Q. Do you mean that the fish which might be caught here be valueless to those smacks, except for shipment to Cuban ports?

A. I do.

Q. About how old were these smacks?

A. I do not know the age of any.

85 WILLIAM REEDY, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. What is your name, age, residence and occupation?

A. William Reedy; age, fifty years; residence, Key West; occupation, liquor dealer.

Q. Have you had opportunities for observing sailing vessels and becoming acquainted with the values thereof?

A. I have in years gone by, not so much as to their valuation.

Q. Did you know the vessel "Antonio Suarez," a fishing smack?

A. Yes.

Q. Did you purchase her by the sale of the United States marshal and about when?

A. The summer of 1898, near the close of the war.

Q. Did you make an examination of the "Antonio Suarez" at or near the time of your purchase?

A. I did.

Q. What did you pay for her?
A. I paid $1,260.
Q. Upon what did you base your estimate of your value upon her?
A. I simply bought her for a party to go in her.
Q. You bought it for the use of Cap. Frank Panier, for what purpose?
A. For fishing purposes.
Q. Was it used for such?
A. Yes; she made one trip.
Q. Did you sell this vessel?
A. I did.
Q. Did you make any repairs on her after you purchased her?
A. I made some repairs on her bulwarks and——
86 Q. For what did you sell her?
A. I sold her for $2,300.
Q. Was that the best price you could get for her?
A. I guess it was. I charged $4,000, but that was all I could get for her.
Q. Did you make any efforts to sell her at higher prices?
A. There was no market for her that I knew of?
Q. Upon what did you base your value, $1,260?
A. Upon information that it was equal to that, and upon information furnished by Cap. Frank Panier for me.
Q. Was there any competition at this sale at which you purchased?
A. There was quite a number of bidders.
Q. Were you the highest bidder for this boat?
A. I think I was. It was knocked down to me.

Cross-examination:

Q. For what purposes did you purchase the "Antonio Suarez?"
A. For fishing purposes.
Q. Did you intend to fish in American or Cuban waters?
A. I intended to fish in American waters but to sell in Havana, was my intention when I bought the smack.
Q. Was the "Antonio Suarez," at the time you purchased her, fully equipped for fishing purposes?
A. With the exception of a few lines, otherwise she was fully equipped.
Q. Was there at this time any fishing business in the port of Key West or any other business?
A. Nothing more than our home industry for supplying the home market.
87 Q. Was there any demand at that time for vessels of this character of fishing smacks?
A. No; not that I am aware of.
Q. The fishing smack business between Key West and Cuba had been stopped for many years, had it not?
A. Yes, sir; quite a number of years.
Q. What was the value of the Spanish fishing smack "Antonio Suarez?" State what you think was the value.
A. I was given to understaud that she cost $8,000.00 before the war. I would say that, that she appeared to me almost new; her timbers and planks were in first-class condition.
Q. Why did you sell this vessel?

A. For the simple reason that I did not propose to have her eating her head off; that is the reason why I sold the vessel. She had made one trip. I sold her because it was a dead loss to keep her; in other words, she was an idle expense.

Redirect examination:

Q. Of your own knowledge, you did not know what this vessel cost?

A. Nothing more than what I heard from word of mouth that she was worth. I will say that she could not have been built here for that money. She was a better vessel than the one Mr. Lowe said he paid $10,000 for; that is, she was stronger—I mean that she was a better boat.

Q. But you have not knowledge enough of the values of vessels to rely on your own judgment, have you?

A. No, sir.

Q. You bought this vessel from the information of Mr. Frank Panier?

A. That went according to the prices; I did not propose and bid $10,000.00.

88 Q. I mean that you relied on your own judgment, did you not?

A. I knew enough to know that the price of the vessel was really worth the money.

WILLAM B. CURRY, a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, residence, and occupation.

A. William B. Curry; 47 years of age; residence, Key West, Fla.; occupation, an auctioneer.

Q. Are you familiar with the value of sailing vessels?

A. I am not any authority on that.

Q. Have you had an opportunity for observing them much with a view of ascertaing their values?

A. In several instances.

Q. How long have you lived in Key West?

A. Thirty years.

Q. Have you had much to do with vessels?

A. I have owned a portion of five.

Q. Have you bought and sold any?

A. Yes, sir.

Q. For about how many years have you bought and sold them?

A. For a period of twenty years.

Q. Were you a member of the firm of Cash & Curry?

A. Yes, sir.

Q. Did you recollect the sales of the fishing smacks captured as prizes during the Spanish-American war?

A. Yes, sir.

89 Q. Do you recollect about when that was?

A. In 1898.

Q. Do you know the vessels bought by that firm?

A. Yes; the "Poder de Dios" and the "Antonio y Paco."

Q. What were the prices paid for them?

A. For the "Poder de Dios," $1,010.00, and for the "Antonio y Paco," $1,910.00.

Q. Did you make an examination of these vessels at or near the time of purchases?

A. Yes, sir.
Q. What was their condition?
A. The "Poder de Dios" was in a fair condition, and the other one, "Antonio y Paco," was in a good condition also.
Q. Were any repairs to these two vessels made by your firm?
A. There were no repairs made that I remember of.
Q. Were they not put in good condition before they were sold?
A. They were put on the ways, cleaned and painted.
Q. Can you state about the cost of all these repairs?
A. No; unless I refer to the books of the store.
Q. Have you any idea?
A. No, sir.
Q. From your knowledge of the value of sailing vessels, what would you say was the value of these at the time you purchased them?
A. The "Poder de Dios," I suppose, was worth $2,800.00, and the "Antonio y Paco" was worth, according to the business conditions existing—she was worth not more than we paid for her. At that time we paid $1,910.00.
Q. What would you say was her full value?
A. She was worth about $4,000.00.
90 Q. Under the business conditions existing, what was her value?
A. What we paid for her.

Cross-examination:

Q. Does the firm of Cash & Curry still own these vessels, or are these vessels sold?
A. They are sold.
Q. When *they* did they sell them?
A. A few months after the purchase of them.
Q. Why did they sell them?
A. On account of lack of employment for them.
Q. Why did you purchase these two vessels?
A. We purchased them, that is, under the impression that after the war was over that American vessels would be allowed to fish in Cuban ports, not having to pay duty on fish more than vessels of other nationalities.
Q. How much did you get for the "Antonio y Paco?"
A. $2,900.00.
Q. How much for the "Poder de Dios?"
A. $1,500.00.
Q. Did you ever buy and sell fishing smacks?
A. No, sir.

Redirect examination:

Q. Were the vessels in, small sailing vessels?
A. I traded in a small one, about fifteen tons, as far as I can remember; the other was sixty-four tons; and the other one owned was about one hundred seventeen tons.

91 . I, the above-named Beverly B. Whalton, do hereby certify that I present to the next notice issued and served in the above-mentioned cause, I was attended at my office of aforesaid by I. A. Zacha-

rias, of counsel for the United States, and also by J. M. Phipps, of counsel for the several claimants herein, on the date herein stated; that the aforesaid-named witnesses who were of sound mind and lawful age, were by me first carefully examined and cautioned and duly sworn to testify to the truth, the whole truth, and nothing but the truth, and they thereupon testified, as is before shown (the said deposition hereinabove set forth were by stipulation of counsel taken by a stenographer, and by said stenographer transcribed from the statements of the said witnesses and the signatures of said witnesses to the said testimony were waived by the respective counsel to this cause, as hereinbefore set forth); that the said testimony was taken at the place in the next notice specified and at the time set forth; and that all that was so written and signed in the presence of said counsel for said United States and said claimants.

And I further certify the reason for taking said depositions was and is, and the fact was and is, that all the defendants live in the city of Key West, more than one hundred miles from the place where the said suit is to be tried; that I am neither of counsel nor attorney to either of the parties to said suit nor interested in the event of said cause; that it being impracticable for me to deliver said deposition and exhibits thereto attached with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up with my own hand and speedily and safely transmitted to the court for which it was taken and to remain under my seal until they have been opened.

As witness my hand and seal this 10th day of October, A. D. 1901.

[COURT SEAL.] BEVERLY B. WHALTON,
County Judge, Monroe County, Florida.

92 In United States district court, southern district of Florida.

UNITED STATES,
vs.
SCHR. "PAQUETE" AND 11 OTHER FISHING SMACKS.

In the matter of claims for restoration of value of vessels.

To Messrs. CONVERS & KIRLIN and J. M. PHIPPS, Esq., *Proctors and Counsel for Claimants:*

Please take notice that the United States will take the testimony of William H. Williams, Alfred Atchison, B. W. Johnson, Samuel Cates, W. D. Cash, W. B. Curry, John Lowe, jr., Milton Curry, Zacarias P. Gusman, and William Reading, and others, each and all of whom reside more than one hundred miles from the place of trial herein, for the final hearing, for use on behalf of the United States, before Beverly B. Whalton, esq., county judge of Monroe County, Florida, who is not of counsel nor interested in this cause, at the office of said Beverly B. Whalton, esq., in the city of Key West, Florida, on the seventh day of October, 1901, at ten o'clock a. m., and thereafter from day to day, as the taking of the deposition may be adjourned; and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States and the Equity Rules.

J. N. STRIPLING,
United States Attorney.

(Endorsed:) Filed Nov. 2, 1901, E. O. Locke, clerk.

93 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES
vs.
SCHR. "PAQUETE HABANA" AND CARGO, AND 11 OTHERS. } Prize.

To the honorable JAMES W. LOCKE, Judge of said court:

Having been appointed by order of the court, at request of parties, to ascertain and report the amount of compensatory damages to be recovered by claimants herein, in accordance with the decree of this court of April 5, 1900, and with the opinion and decree of the United States Supreme Court in the case of the United States vs. the "Lela" of January 29, 1900, I would respectfully report that July 28, 1900, after filing of interrogatories by counsel for claimants, and of objections and cross-interrogatories by the United States attorney on behalf of the United States, and McCammen & Hayden, on behalf of the captors, commission was issued by me as clerk of said court to take testimony of witness for claimants in Havana. On September 3rd, 1900, said commission were returned executed, and placed in public files in the clerk's office, and parties in interest informed thereof.

On October 9, 1900, I notified counsel of parties in interest that I was ready to proceed with the matter, but counsel for complainants asked for further time.

On May 31st, 1901, counsel for claimant asked to be heard to sum up these cases in last week in June, if convenient to the United States attorney and counsel for captors. Counsel for the United States and captors being consulted by letter dated June 13, on June 17th counsel for captors replied that they could not be present in June, but would advise with the U. S. attorney. On June 26, 1901, counsel
94 for claimants wired asking that time for hearing argument be set for July 17th, 1901.

On June 30th, counsel were notified that I would hear argument at any time between July 8th and 13th; but counsel for claimants replied under date of July 9th that he was unable to be present at that date. On July 22nd I notified counsel interested that I would hear argument on August 6th, 1901. On August 6th there appeared before me J. Parker Kerlin, esq., counsel for claimant, and J. N. Stripling, esqr., U. S. attorney.

The U. S. attorney objected to final argument being heard, as the United States has not yet submitted evidence. It was agreed, however, that argument be heard on the claims as they stood, and the United States should have a reasonable time to take testimony in Key West, and submit the same in time to close this matter up before a session of this court was held.

The testimony of John F. Horr was then taken by the United States before me, and the hearing adjourned.

On August 30th, 1901, counsel were notified by me in writing that on October 1st I should prepare my report on such testimony as might then be before me.

By letter of September 4th, counsel for claimants asked that I do not report until he examine testimony taken by the United States.

On September 30th, the U. S. attorney procured from me as clerk U. S. court, a subpœna for witnesses to appear before the county judge at Key West, Fla.

On October 13th testimony taken by the United States at Key West pursuant to notice and by consent of counsel, who were present and represented the respective parties, and the testimony so taken was duly submitted and considered.

From all the testimony taken and submitted, and from the filed in court I have prepared and now submit my findings as follows:

I find due the claimants of the—

95

"Antonio Suarez"	$10,945.00
"Engracia"	7,218.08
"Oriente"	6,827.72
"Poder de Dios"	8,507.30
"Espana"	11,737.69
"Antonio y Paco"	10,003.30
"Fernandito"	7,471.94
"Paquete Habana"	5,687.06
"Quatro de Setiembre"	7,285.75
"Santiago Apostol"	11,632.74
"Lela"	6,643.91
"Severita"	9,566.49
	$103,526.98

One hundred and three thousand five hundred and twenty-six 98 100 dollars.

I file herewith separate findings in each case, showing what is allowed on account of the vessels, what on account of cargo, and how arrived at, and what for interest. I have also included the amounts paid by claimants to the U. S. court for issuing commissions, and to the commissioner appointed by this court for taking testimony in Havana.

The quantity of fish, cargo of said vessels, I ascertained from the testimony in preparatorie en file, and I allowed $5.00 per quintal as its value, the only testimony thereon being that in April and May, 1898; same was worth in Havana $10 per kintal, Spanish silver. The Spanish silver which has been realized upon by this court in prize matters has proved to be worth 50 cents on the dollar, U. S. currency. Nothing was claimed or allowed for salt fish.

In determining the value of the vessels I have discarded the testimony given by John F. Horr, as it did not appear from his testimony that he had knowledge, or claimed to have knowledge, of the value of such vessels, or that he examined them with reference to ascertaining their value as "smacks," or had knowledge of their values in Havana, and he testified generally as to his "impressions" as to their condition and value in 1898.

Neither have I considered the prices which they brought at
96 auction in Key West as a measure of their real value. The testimony taken in Key West by the United States shows that there was no demand for them, no use for them there; that purchasers bought them on "speculation," and finding there was no use for them sold them, at a profit, but for what they could get.

John Lowe bought the "Engracia" and sold her at a profit of $1,000.00, and the "Quatro de Setiembre" at a profit of $1,050.00, yet says there was no use for smacks; that two built in Key West cost each $10,000.00.

Wm. Reedy sold the "Antonio Suarez" at a profit of over $1,000, "because it was a dead loss to keep her;" she "was an idle expense;" still, he says, she was a better vessel than those built by John Lowe, which cost to build in Key West $10,000 each.

A. Achieson bought the "Santiago Apostol" for $2,700 and sold her for $4,000, and thinks he did not get her real value, but, as he had no use for her, sold her.

The testimony taken in Key West shows that all these vessels were in good condition, though they had been laying there idle some time, with the exception of a few trifling repairs. Neither were the witnesses whose testimony was taken in Key West experts as to the values of smacks, with the exception of John Lowe and W. D. Cash, and they both testify that the value of such vessels in Key West at that time was only speculative.

The decree directs me to ascertain the amount that will compensate the owners in Havana for the capture of their vessels and cargoes in April and May, 1898, and I fail to find any testimony on that—which is the only issue—excepting the testimony which was taken in Havana.

In the "Lively" and cargo, I Gallison, 29, the principle as to damages for wrongful capture is said to be "equal to the real injury sustained."

In the "Amiable Nancy," 3 Wheaton, R. 546, measure of damages for loss of vessel by trespass is the "full value of the property." I consider this is what the Supreme Court intended by their judgment
97 to be ascertained.

In the "Ironmaster," Swabey, 443 (Pritchard's Ad. vol. 2, 1745) best evidence of value of a vessel is said to be the "opinion of competent persons who knew her shortly previous to her loss;" and further the "owner's affidavit of prime cost, unsupported by documentary proof is not sufficient."

From this, one can conclude that if such affidavit be supported by documentary proof it will be sufficient.

The testimony taken in Havana consists of the sworn statement of the owners or agents of the vessels as to their cost, the expenditures for repairs (rebuilding in some instances), in some cases legal documents, mortgages, &c., showing sums paid; extracts from books kept by the owners; and in every case, the testimony of an official whose duty it was to appraise and register each vessel in port, and a certified copy of his official appraisal and registry, made in March 1898, taken from the records. Such evidence, positive in character, and of a nature recognized by the law as being the best possible, can not be controverted by the impressions, and estimates, and guesses of witnesses who can not qualify as experts on values of such vessels, and only pretend to speak as to values in another port, in another country, and where there was no use for such property.

I therefore accept the testimony taken in Havana as establishing the value of the vessels and of the fish to the claimants at the dates of capture.

I allow 8% interest on such values from the dates of capture up to the

filing of this report, deducting the portion of proceeds returned to claimants. When the amount so returned exceeded the interest then due I made the computation according to the U. S. rule for partial payments.

I do not consider that the amounts as found fully "compensate" the claimants. I know officially that they have been to expense for proctors' fees, copies, printing of records, defending the libels for prize, and prosecuting their claims, but whether or not such items come within the scope of my appointment, no testimony has been submitted to
98 me in relation to them, and I therefore only refer to them to emphasize the fact that they are not included in this report.

I file herewith the testimony taken, separate reports as to each case, and correspondence and notices (or copies of same) as to the proceedings in connection herewith.

Respectfully,

E. O. LOCKE,
U. S. Commissioner.

Nov. 2nd, 1901.

99 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SLOOP "PAQUETE HABANA" AND CARGO, JOSE PAZOS, claimant on behalf of owners and crew. } Prize No. 9.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court, of April 5th, 1902, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola", dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i.e.:

Value of vessel	$4,500.00	
Interest on do. at 8% from date of capture, April 25th, 1898, to Nov. 2nd, 1901	1,287.00	
		$5,787.00
Less proceeds already returned claimant		121.69
		$5,665.31
And expenses of issuing commission and executing commission in Havana		21.75
Total		$5,688.06

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me and the method of arriving at the result above.

I also append my bill for services under said order and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

United States district court, southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE HABANA." } Prize No. .

To E. O. Locke, U. S. commissioner, specially appointed to take testimony and report.

For services in taking testimony, sending notices, hearing argument, and computing amounts, and reporting compensatory damages $25.00

(Endorsed:) United States vs. sloop "Paquete Habana." Report of Commissioner E. O. Locke. Filed November 2nd, 1901. E. O. Locke, clerk.

100 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES
vs.
SCAR. "PAQUETE HABANA" AND CARGO, AND eleven others. } Prize.

Now comes the United States, and objects and excepts to the report of the commissioner filed herein, upon the following grounds:

1st. That the amount allowed as compensatory damages for the following vessels, and each of them, is excessive and not sustained by the evidence:

"Antonio Suarez"	$10,945.00
"Engrasia"	7,218.08
"Oriente"	6,827.72
"Poder de Dios"	3,507.30
"Espana"	11,737.69
"Antonio y Paco"	10,003.30
"Fernandito"	7,471.94
"Paquete Habana"	5,687.06
"Quatro de Soteimbre"	7,285.75
"Santiago Apostol"	11,632.74
"Lola"	6,643.91
"Severita"	9,566.49

101 2nd. That the value of each of said vessels, to wit: "Antonio Suarez," "Engracia," "Oriente," "Poder de Dios," "Espana," "Antonio y Paco," "Fernandito," "Paquete Habana," "Quatro de Setiembre," "Santiago Apostol," "Lola," and "Severita," as ascertained by the commissioner, is contrary to the evidence.

3rd. That the commissioner erred in disregarding the testimony of the witness, John F. Horr, for the United States.

4th. The commissioner erred in not hearing and sustaining the objections of the United States, the captors, to the interrogatories propounded

to the several witnesses examined under commission in Havana, Cuba, to wit:

Jose Pazos, Juàn Lluria y Pujadas, Francisco Gandon, Antonio Suarez, Seguendo Casteleiro, Cesar de la Torre, Severo Gonzalez, Domingo Trocha, Francisco Vilar, Francisco Gonzalez, Manuel Carillo, Jose Bengoehea, Santiago Deus.

5th. The commissioner by his report appears to have disregarded wholly the testimony taken before B. B. Walton, commissioner at Key West, Florida, of the several witnesses for the United States, to wit:

102 Samuel Cates, William D. Cash, Milton Curry, John Lowe, Alfred Atchison, William Reedy, William B. Curry.

6th. The commissioner erred in limiting his consideration of the value of said vessels to the testimony as to the cost and alleged market values in Havana, Cuba, only.

J. N. STRIPLING, *U. S. Attorney.*

(Endorsed:) In United States district court, So. Dist. of Fla. The United States vs. Schr. "Paquete Habana" and cargo, and eleven others. Exceptions to commissioner's report. Filed this 5th day of Nov., 1901. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. J. N. Stripling, U. S. attorney.

103 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES
vs.
SLOOP "PAQUETE HABANA" AND CARGO, Jose Pazes, claimant. } Prize # 9.

This cause coming on to be heard upon the mandate of the Supreme Court, and the report of the special commissioner herein appointed by consent of parties, the testimony accompanying the same, and the exceptions thereto, and having been fully heard by argument and duly considered, it is hereby ordered that the exceptions to said commissioner's report be overruled; and it is found that the compensatory damages due claimant under said mandate of the Supreme Court, with interest to date of such commissioner's report, is $5,687.06.

And it is further ordered, adjudged, and decreed that the claimant, Jose Pazes, claimant on behalf of owners and crew, have, receive, and recover from The United States, the libelant, the said amount of $5,687.06, together with interest from the 2nd day of November, 1901, the date of said commissioner's report, and twenty-five dollars cost to said commissioner, which is hereby taxed and allowed.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., February 8th, 1902.

(Endorsed:) U. S. district court, southern district of Florida. The United States vs. Schr. "Paquete Habana," &c., claimant. Decree for claimant. Filed Feb. 8th, 1902. E. O. Locke, clerk.

104 In the United States district court, southern district of Florida.

UNITED STATES
vs.
SCHOONER "PAQUETE HABANA" AND CARGO, and eleven others.

These several causes coming on to be heard, on application of the United States for time within which to consider the advisability of an appeal,

It is ordered, that sixty days from this date be allowed to the United States and to the captors within which to take an appeal from the decree of February 8th, 1902, determining the amount awarding compensatory damages to the claimants herein.

Done and ordered at Jacksonville, Florida, this third day of March, A. D. 1902.

JAMES W. LOCKE, *Judge.*

(Endorsed:) In United States district court, Southern Dist. of Fla. United States vs. Schooner "Paquete Habana" and cargo, and eleven others. Order allowing time in which to perfect an appeal. Filed Mar. 3, 1902. E. O. Locke, clerk.

105 United States district court, southern district of Florida.

THE UNITED STATES
against
THE SPANISH SMACK "PAQUETE HABANA," In prize.
Juan Pasos, claimant.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

J. Parker Kirlin, being duly sworn, deposes and says: I am a member of the firm of Convers & Kirlin, proctors for the claimant herein, and as such have had knowledge and control of the conduct of this case. My firm was employed as proctors by the master of the said "Paquete Habana," acting for the then owners thereof, at Key West, Florida, in May, 1898, when the said vessel was in that port and libeled in this court as prize of war at the instance of the United States. As such proctors my firm moved this court to open the decree of condemnation and sale, which had been entered herein on or about May 23, 1898, and to file a claim in said action, on behalf of the said owners, in the name of the master of the said vessel, which motion was duly granted on or about May 28, 1898. Pursuant thereto my firm duly filed a claim to the said vessel, on behalf of the said owners, in the name of the master, Juan Pasos, as master and lawful bailee thereof. On or about May 30, 1898, a final decree of condemnation and sale in the above-entitled action was entered, and the vessel was sold as prize of war.

106 The said case of the United States against the "Paquete Habana" came on to be heard in the Supreme Court of the United States, and the said court issued its mandate to the United States

district court for the southern district of Florida, ordering that the decree of the said court be reversed and that the proceeds of the sale of the vessel, together with the proceeds of any sale of its cargo, be restored to the claimant, with damages and costs.

Pursuant to such mandate an interlocutory decree was entered herein, upon the consent of the counsel for the United States and of the counsel for the captors of the said vessel, by the terms of which it was ordered that the final decree entered herein, on or about May 30, 1898, be vacated and set aside, and that the libel be dismissed, and that the proceeds of the sale of the said vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and costs, and the question whether the amount of such damages, when determined, should be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, was reserved for further consideration on the coming in of the report of the commissioner appointed to determine the amount of such damages, and it was referred to Eugene O. Locke, esq., as special commissioner, to determine the amount thereof.

107 Further proceedings in accordance with such interlocutory decree were had, and on or about February 8, 1902, a final decree was entered in favor of the claimant herein.

This application is made to vacate and set aside the said decree and to amend the proceedings herein, in certain particulars, on the following grounds:

1. The said master, who appears as the claimant of record herein, acted in employing my firm for and on behalf of the persons who were the owners of the said vessel at the time of the seizure thereof and the filing of the libel herein, and is described as so acting in the claim and test affidavit filed herein, and the said persons are the real parties in interest herein.

The owners of the said vessel at the time of the seizure of the vessel and the filing of the libel herein were Justo Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, as appears from the claim and test affidavit filed herein, and from the testimony taken under the interlocutory decree hereinbefore referred to. The reason why the said parties were not made the actual claimants of record in the said case was because they were not within the United States at the time the said claim was filed, but were then in the island of Cuba, as I am informed and believe. The said parties who were then the owners of the said vessel are the real parties in interest and they now desire to be substituted in place of the said master as claimants of record.

Powers of attorney from the said parties who were the owners of the said vessel at the time of her seizure and the filing of the libel herein, and who are the true parties in interest herein to conduct the said case and to receive payment of any and all sums found and decreed to be due herein from the United States, are filed in this court, and appli-

108 cation is now made to have the said decree entered herein on or about February 8, 1902, vacated and set aside, so that the names of the said parties, instead of the name of the said master, may be substituted as the claimants in any decree to be entered herein, and that the name of the said parties may be substituted for the name of the said

master, as claimants of the said vessel, in all the papers and proceedings had herein.

2. The said commissioner, Eugene O. Locke, duly reported his findings, and on exception to his report argument was had and the said report was confirmed. No further proceedings have been had subsequent to the aforesaid report upon the question of the responsibility for or apportionment of the said damages as provided in the said interlocutory decree hereinbefore referred to, and application is further made to reopen the said decree entered herein on or about February 8, 1902, for the purpose of taking such further proceedings as have been provided for by agreement in the said interlocutory decree, and as may be right and proper, before the entry of a final decree herein.

J. PARKER KIRLIN.

Sworn to before me this 9th day of May, 1902.

[NOTARIAL SEAL.] JAMES T. KILBRETH,
Notary Public, New York County.

(Endorsed:) United States district court, southern district of Florida. The United States against the Spanish Smack "Paquete Habana," Juan Pasos, claimant. Affidavit of J. Parker Kirlin. Filed this 12th day of May, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Convers & Kirlin, proctors for claimants.

109 At a stated term of the United States district court for the southern district of Florida, held in the court rooms, in the Federal building in the city of Jacksonville on the 19 day of May, 1902. Present: Honorable James W. Locke, district judge.

THE UNITED STATES
against
THE SPANISH SMACK "PAQUETE HABANA,"
Juan Pasos, claimant.
} In prize.

On reading and filing the affidavit of J. Parker Kirlin, verified May 9, 1902, and on all the papers and proceedings had herein,

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the United States attorney, it is hereby

Ordered, I. That the final decree heretofore made herein on or about February 8, 1902, be vacated and set aside.

II. That the report of the special commissioner appointed to assess and determine the amount of the claimant's damages herein be, and the same hereby is, confirmed, with twenty-five dollars costs, hereby taxed and allowed, to be paid to the said commissioner.

III. That the names of Justa Galban, Manuel Pasos, Jose Pasos, and Juan Pasos be substituted for the name of Juan Pasos, as claimants of the said vessel, in all the papers and proceedings had herein.

110 IV. That leave is reserved to the claimants to enter a new decree for the amount of their damages and costs as aforesaid, after a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors,

or apportioned between the United States and the naval captors, the determination of this question being reserved for further proceedings.

JAMES W. LOCKE, *Judge.*

Aug. 19, 1902.

(Endorsed:) United States district court, southern district of Florida. The United States against the Spanish smack "Paquete Habana," Juan Pasos, claimant. Order vacating final decree. Filed this 19th day of May, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Convers & Kirlin, proctors for claimants.

111 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville on the 16th day of June, 1902. Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE SPANISH SMACK "PAQUETE HABANA," JUSTA Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, claimants.

An interlocutory decree having been entered on or about April 5, 1900, directing among other things that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein, at the sum of $\$5{,}687\frac{06}{100}$, as will more fully appear from his report on file;

112 And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States

and the naval captors as provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimants, Justa Galban, Manuel Pasos, Jose Pasos, and Juan Pasos, have, receive, and recover from the United States, the libelant herein, the sum of $\$5,687\frac{06}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Paquete Habana" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $\$280\frac{46}{100}$, making in all the sum of $\$5,992\frac{52}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

113 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, a further hearing will be had herein before the Honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors as provided in the interlocutory decree entered herein on or about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.

J. N. STRIPLING, Esq.,
U. S. Attorney for the Southern District of Florida.

To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed.) United States district court, southern district of Florida. The United States against the Spanish smack "Paquete Habana." Notice of further hearing. Final decree and notice of settlement. Filed June 16, 1902. E. O. Locke, clerk. Service of a copy of the within notice of further hearing and of the within proposed final decree and notice of settlement thereof is admitted this ninth day of June, 1902. H. M. Hoyt, asst. atty. genl. U. S.

114 United States district court, southern district of Florida.

THE UNITED STATES, APPELLANT,
vs.
THE FISHING SMACK "PAQUETE HABANA." Justa Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, claimant, appelle. } Prize.

The United States assign error to the final decision and decree of the United States district court, in the southern district of Florida, herein as follows:

First. The court erred in sustaining the report of the commissioner as to the amount of damages sustained by the claimant.

Second. The court erred in overruling the exceptions filed by the complaint to the report of the commissioner.

Third. The damages awarded to the claimant are excessive and exorbitant.

Fourth. The court erred in overruling the motion of the complainant to have the damages awarded against the captors.

Fifth. The court erred in awarding damages herein against the United States.

J. N. STRIPLING,
United States Attorney.

(Endorsed.) United States district court, southern district of Florida. United States, appellant, vs. Fishing Smack "Paquete Habana," Justa Galban et al., claimant, appellee. Filed June 24th, 1902. E. O. Locke, clerk.

115 United States district court, southern district of Florida.

THE UNITED STATES, APPELLANT,
vs.
THE FISHING SMACK "PAQUETTE HABANA," JUSTA Galban, Manuel Pasos, Jose Pasos, & Juan Pasos, claimant, appellee. } Prize.

Now comes the United States, appellant, considering itself aggrieved by the final decision and decree herein, and alleging error in the said decree, appeals therefrom to the Supreme Court of the United States. It presents herewith an assignment of errors complained of and thereupon prays that the said appeal may be allowed, and that the record and all proceedings herein may be duly certified to the Supreme Court of the United States, in accordance with the rules and practices in such cases made and provided, and to the end that the said appeal may be heard and determined by the said court.

J. N. STRIPLING,
United States Attorney.

June 24th, 1902.

Upon reading and filing the foregoing notice and prayer of appeal, and the assignment of errors on appeal, it is—

Ordered that the appeal of the United States be, and the same is, hereby allowed.

JAMES W. LOCKE,
United States Judge.

June 24th, 1902.
(In open court.)

116 District court of the United States, southern district of Florida.

THE UNITED STATES
vs.
THE "PAQUETE" AND CARGO. } Prize.

I, Eugene O. Locke, clerk of the district court of the United States in and for the southern district of Florida, hereby certify that the foregoing pages, numbered from one to one hundred and fifteen, inclusive, is a true copy of the record, assignments of errors, and proceedings in said court in the above-entitled cause.

In testimony whereof I hereunto set my hand, and affix the seal of said court, at Jacksonville, in said district, this eighteenth day of September, A. D. 1902.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

117 (Indorsment on cover:) Office Supreme Court of U. S. Received October 4, 1902. File No. 18806. S. Florida, D. C. U. S. Term No. 578. The United States, appellant, vs. The Spanish Smack "Paquete Habana," Justa Galban et al., claimants. Filed January 31, 1903.

O

CLERK'S COPY. 3631

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 579.

THE UNITED STATES, APPELLANT,

vs.

THE SPANISH SCHOONER "LOLA," SEVERO GONZALEZ, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(13807.)

3031

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 579.

THE UNITED STATES, APPELLANT,

vs.

THE SPANISH SCHOONER "LOLA," SEVERO GONZALEZ, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the district court of the United States, southern district of Florida.

UNITED STATES OF AMERICA
vs.
THE LOLA. } Prize.

To the honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the sailing vessel "Lola," her tackle, apparel, furniture, and cargo, in a cause of prize alleges—

That pursuant to instructions from the President of the United States, H. W. Lyon, commander of the United States Navy, in and with the United States ship of war the "Dolphin," her officers and crew, did, on the 27th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas as a prize of war the said sailing vessel "Lola," with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subjected to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may, by the proper process of this court, be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that on proper proofs being taken and heard and that all due proceedings being had the said "Lola," together with her tackle, apparel, furniture, and cargo may, on the final hearing of this cause by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

J. N. STRIPLING,
U. S. Attorney, S. D. of Fla.

Let attachment aed monition be issued as prayed, returnable Wednesday, day of 18th May, A. D. 1898, at 10.30 a. m.
Entered as of course.

E. O. LOCKE, *Clerk*,
By J. OTTO, *Deputy Clerk*.

(Endorsed:) In the district court of the United States, southern district of Florida. United States vs. sailing vessel "Lola" and cargo. Libel. Filed Apr. 30, '98. E. O. Locke, clerk.

2 UNITED STATES OF AMERICA.

District court of the United States, southern district of Florida.

The President of the United States to John F. Horr, esq., the marshal of the United States for the southern district of Florida, greeting:

You are hereby commanded forthwith to attach, seize, and take into custody the Spanish schooner "Lola" and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize; and how you shall have executed this precept make known to the said court, at the court rooms, in Key West, the 18th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof, with your certificate of execution hereon written.

Witness the honorable James W. Locke, judge of the said court, at Key West, in said district, this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-first.

[SEAL.] E. O. LOCKE, *Clerk*,
By J. OTTO, *Deputy Clerk*.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. "Lola." Attachment. Filed May 2, 1898. E. O. Locke, clerk.

Return of marshal.

Received the within writ of attachment Apr. 30, 1898, and duly executed same as within commanded by attaching and taking unto custody the within-named Spanish schooner "Lola."

JOHN F. HORR,
U. S. Marshal, So. District of Fla.

UNITED STATES OF AMERICA.

District court of the United States, southern district of Florida.

The President of the United States to John F. Horr, esq., the marshal of the United States for the southern district of Florida, greeting:

Whereas on the 30th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, esq., filed in the office of the clerk of said court their libel against the Spanish sailing vessel "Lola" in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. "Dolphin," Apr. 27th, 1898, as a prize of war;

Wherefore the said libellant pray' that the usual process of attachment may issue against the said sailing vessel "Lola," that monition may issue citing all parties having or claiming any interest or prop-
3 e'ty in said sailing vessel "Lola" to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for service in said cause, and that the said "Lola" may be condemned and sold to pay

said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive; and, whereas, the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Wednesday, the 18th day of May, A. D. 1898;

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said "Lola" to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Wednesday, 18th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof and by posting two other such copies in the most public places of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 18th day of May, aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the independence of the United States the hundred and twenty-first.

[SEAL.]

E. O. LOCKE, *Clerk.*
By J. OTTO, *Dep'y Clerk.*

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. Lola. Monition. Filed May 2, 1898. E. O. Locke, clerk.

Return of marshal.

Received the within writ of monition April 30, 1898, and duly executed the same as within commanded by reading the original to master and posting 2 copies, as within commanded.

JOHN F. HORR,
U. S. Marshal, So. Dist. of Fla.

In the district court of the United States, southern district of Florida.

SCHR. LOLA. Prize.

GUSTAV SABLESTROM, being duly sworn, says: My name is Gustav Sablestrom. I am quartermaster U. S. Navy, on board U. S. S.
4 "Dolphin;" that on the 27th day of April, A. D. 1898, the Spanish sch. "Lola" was captured as a prize of war by the U. S. S. "Dolphin," commanded by H. W. Lyon; that said sch. "Lola" was delivered by said H. W. Lyon to Rear-Admiral Wm. T. Sampson (commanding North Atlantic squadron), together with the documents and other papers found on said sch. "Lola;" that said sch. "Lola," with said documents and papers aforesaid, were turned over to affiant, as prize master, with instruction to proceed to Key West, Florida; that said

papers and documents this day delivered to J. M. Phipps, prize commissioner, at Key West, Florida, are the identical documents and papers pertaining to the said delivered to him, and that they are in the same condition as when delivered to him.

GUSTAV SABLESTROM.

Sworn to and subscribed before me this 30th day of April, A. D. 1898.

J. M. PHIPPS,
Prize Commissioner.

(Endorsed:) Sch. "Lola." Prize. Aff't prize master. Filed Apr. 30, 1898. E. O. Locke, clerk.

Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court to all persons who may be produced as witnesses to be examined in preparatorio.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been, a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship- in sight at the time of the capture?

5 4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what country were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and

what, part, share, or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessels? and if any such were made in
6 what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they? Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe that at the time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port,

the goods did, do, and will belong to the same persons and to none others?

13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters, or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or cancelled, or attempted to be cancelled, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned?

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

7

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or trans'hipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on

board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers, or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession, or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession, or occupation? Had they any commission? For what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were and are all the passports, sea briefs,
8 charter parties, bills of sale, invoices, and papers which were found on board entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or persons who appear to have been sworn, or to have affirmed thereto without their ever having, in fact, made any such oath or affirmation? How long time were they to last? Was any duty or fee payable, and paid, for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? And if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what busines? Had the said ship any license or passport from any foreign power or authority during the voyage? If so, state from whom been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course at the time of her being first pursued and taken? Was her

course altered upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe that, if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition,
9 and when and where—they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

In the United States district court in and for the southern district of Florida. In Admiralty.

THE UNITED STATES OF AMERICA
vs.
THE SPANISH STEAMER "LOLA" AND HER CARGO. } Prize.

Deposition of TOMAS BETANCOURT, a witness produced, sworn, and examined in preparatorio on the 21st day of May, A. D. 1898, at the United States court-house, Key West, Florida, in said district, on the standing interrogatories established by the district court of the United States for the southern district of Florida, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Lola" and her cargo.

1. To the first interrogatory deponent answers:

My name is Tomas Betancourt. I was born in the Canary Islands, and during the last seven years have lived in Havana, where I have lived for 21 years. I am a married man. My family live in Cuba. I am a subject of Spain.

2. To the second interrogatory deponent answers:

I was present at the time of the taking and seizing of the ship. She has no commission or license.

3. To the 3d interrogatory deponent answers:

I was captured near Bahia Honda, Cuba, on the 27th day of April, A. D. 1898. We were captured on account of the war between Spain and the United States. Our boat sailed under the Spanish flag. We had no other colors on board. There was no resistance made at the time of the capture. The U. S. S. "Dolphin" captured us. There were no other vessels present.

4. To the 4th interrogatory deponent answers:

I was appointed commander of the ship by Severo Gonzales, the owner of the boat. I took possession of her in Havana about four years ago. The owner delivered possession. The owner lives in Cuba.

5. To the 5th interrogatory deponent answers:

The vessel is about 55 tons burden. There were six mariners on board, including myself. I only have one now. They are all Spanish subjects. They all came on board from different ports and I hired them.

6. To the 6th interrogatory deponent answers:

The crew had an interest in the cargo, but not in the vessel. One-third was for the ship and two-thirds for the crew. I was master of the ship at the time of her capture. I have known the vessel for about 15 years. I do not know where she was built.

7. To the 7th interrogatory deponent answers:

The vessel is named "Lola." She has been called by that name for about 9 years. She was once called the "Lizzie Roy Elveda."

8. To the 8th interrogatory deponent answers:

She had on board a cargo of live fish, which were caught from the waters of ocean. They were caught about eight days before we were captured. We had about 10,000 pounds of fish.

9. To the 9th interrogatory deponent answers:

The vessel at the time of her seizure was owned by Severo Gonzales. He was born in *the* Spain, and now lives in Havana, Cuba. He has lived there for a long time. He is a Spanish subject. He has owned the boat about ten years.

10. To the 10 interrogatory deponent answers:

I do not know anything about the bills of sales.

11. To the 11 interrogatory deponent answers:

The fish were caught from the sea and were put on board as they were caught.

12. To the 12 interrogatory deponent answers:

Two-thirds of the cargo belonged to the crew and the other third belonged to the owner of the vessel.

13. To the 13 interrogatory deponent answers:

There were no bills of lading signed.

14. To the 14 interrogatory deponent answers:

There are not in the United States any bills of lading or other papers relating to the ship and her cargo.

15. To the 15 interrogatory deponent answers:

There was no charter-party signed for the voyage.

16. To the 16 interrogatory deponent answers:

We only had crew and muster-roll on the said vessel when the was

captured; they were the same which we had on board after clearing from our last port of entry.

17. To the 17 interrogatory deponent answers:

The ship has never before been seized and condemned as a prize.

18. To the 18 interrogatory deponent answers:

I have sustained a loss by the capture of this ship and her cargo. I have not received any indemnity or promise of indemnity for any loss which I have sustained or may sustain.

19. To the 19 interrogatory deponent answers:

The ship and cargo are not insured.

20. To the 20 interrogatory deponent answers:

I have already stated that the cargo was the property of the crew and the owner. If it were at the port of its destination it would be theirs and none other.

21. To the 21 interrogatory deponent answers:

The cargo was manufactured, produced, and grown in waters of the ocean off the coast of Cuba.

22. To the 22 interrogatory deponent answers:

The cargo was taken from the sea.

11 23. To the 23 interrogatory deponent answers:

There are no papers of any description concerning said vessel and her cargo except those found on board.

24. To the 24 interrogatory deponent answers:

The prize master took all the papers and documents of the ship.

25. To the 25 interrogatory deponent answers:

The bulk was not broken during the voyage, but since the capture the said cargo was taken by the U. S. marshal.

26. To the 26 interrogatory deponent answers:

There were no persons of any description on board the boat other than the crew.

27. To the 27 interrogatory deponent answers:

All the papers found on board the boat are entirely true and fair.

28. To the 28 interrogatory deponent answers:

I have not written or signed any letters or papers concerning the ship and her cargo.

29. To the 29 interrogatory deponent answers:

The ship was steering her course toward Bahia Honda; her course was not altered upon the appearance of the vessel which made the capture. On the day before I was captured, viz., 26th day of April, 1898, I was captured by the U. S. S. "Cincinnati," and warned not to go in Havana. I changed my course and put for Bahia Honda, where I was told I would be allowed to land. The next morning the U. S. S. "Dolphin" came up and took the ship.

30. To the 30 interrogatory deponent answers:

I do not know how many times the vessel has been transferred, or anything about the bills of sale.

31. To the 31 interrogatory deponent answers:

There were no cannons of any description on board the boat, and no arms or ammunition of any kind.

32. To the 32 interrogatory deponent answers:

I have already told all I know concerning this ship and her cargo, and the true property and destination of the same.

TOMAS BETANCOURT.

Sworn to and subscribed before me May 21st, 1898.

J. M. PHIPPS,
Prize Commissioner.

(Endorsed:) Filed May 26th, 1898. E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

THE UNITED STATES,
vs.
SCHOONER "LOLA" AND CARGO. } Prize.

This cause having come on to be heard upon the libel and proofs and testimony taken in preparatorio, and all due proceedings having
12 been had and proclamation having been duly made in open court, and Thomas Betancourt having appeared and claimed said schooner "Lola" and cargo upon the gronnds of her being a fishing vessel and not liable to capture, and he being fully heard, and it appearing to the court that the said schooner "Lola" and cargo are enemy's property, now, on motion of Joseph N. Stripling, attorney of the United States, it is ordered, adjudged, and decreed that the said schooner "Lola" and cargo be condemned and forfeited to the United States as lawful prize of war, said claim notwithstanding.

And it is further ordered that the marshal proceed to advertise and sell said vessel and cargo, after due and proper notice, at public auction, and make return of the sale and expenses to this court, and deposit the proceeds with the assistant treasurer of the United States at New York, as required by law.

JAMES W. LOCKE, *Judge.*

Key West, Florida, May 30th, 1898.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. "Lola." Decree of condemnation. Filed May 30, 1898. E. O. Locke, clerk.

The United States district court, southern district of Florida.

THE UNITED STATES }
against
THE "LOLA." }

A motion having been made in behalf of the owners of the above-named vessel to open the decree of condemnation and sale and to allow a claim to be filed, and said motion having been argued by counsel for the vessel and for the Government, it is now—

Ordered that the decree of condemnation and sale heretofore made herein be vacated and set aside, and that leave be, and hereby is, granted

to the owners of the vessel to file a claim in the name of the master on or before May 30, 1898.

Key West, May 28, 1898.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsed:) U. S. district court, southern district of Florida. United States vs. Schr. "Lola." Order setting former decree aside. Filed May 28th, 1898. E. O. Locke, clerk.

United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
against
THE "LOLA." } Claim.

And now comes Thomas Betancourt, master and lawful bailee of the fishing boat "Lola," and interviewing for the interests of Sebers
13 Gonzales in the said fishing boat, her tackle, apparel and furniture, and in her fish, as the same are attached as prize at the instance of the United States, he claims the same accordingly; and the said claimant avers that before and at the time of the alleged capture of the said vessel and fish the above-named Sibors Gonzales was the bona fide owner of the said vessel, her tackle, apparel, and furniture, and of one-third of said fish, and that the other two-thirds of said fish belonged to this claimant and the other members of the crew, all of whom are Cubans, prior to the recognition of Cuban independence were Spanish subjects, and that no other person is the owner of said vessel or fish, and that the claimant is the lawful bailee of both the vessel and fish. He further avers that said vessel and fish under the general law and the proclamation of the President of April 26th, 1898, were priviledged and exempt from capture and condemnation as a fishing vessel, with her catch, and he denies that the vessel and fish are lawful prize of war.

Wherefore he prays leave to defend accordingly and to show cause why the said vessel and fish at the time of said capture were not liable to seizure and condemnation as prize of war.

THOMAS BETANCOURT.

Sworn to and subscribed before me this 28 day of May, 1898.

J. OTTO, *D'y Clerk.*

CONVERS & KIRLIN,
Proctors for Claimants.

United States district court, southern district of Florida.

THE UNITED STATES OF AMERICA
against
THE "LOLA." } Test Affidavit.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

THOMAS BETANCOURT, being duly sworn, says:

1. I am master of the fishing boat "Lola" and lawful bailee of the vessel and her fish. The vessel belongs to Severo Gonzales, of Havana,

a native from Cuba domiciled in Cuba at the time of the recognition of the independence of the Cuban people by Congress, and is used exclusively in the Gulf of Mexico for catching small fish. Her keel length is about 51 feet and her tonnage about 35 tons. The fishing is done on shares, one-third of the catch belonging to the owner and two-thirds to the crew. The fish now on board are thus owned. They are kept and sold alive.

2. I left Havana on the last trip April 11th and proceeded to Campeche sound, off Yucatan. We fished there 8 days and then started back to Havana with the catch. We were stopped by the blockading squadron near Havana on May 26th, 1898. Prior to said time we were unaware of the existence of war or any blockade. We were stopped by the United States ship "Cincinnati" and brought into Key
14 West as prize of war by the "Dolphin." No effort was made by the vessel to run the blockade after we learned of its existence.

3. I have been master of the said vessel for 4 years. During that time the vessel has carried no cargo save her catches of fish, and has carried no passengers.

Her crew consisted of 6 persons, including the captain. She is of schooner rig, and has two masts.

THOMAS BETANCOURT.

Sworn to and before me this 28th day of May, 1898.

J. OTTO, *D'y Clerk.*

(Endorsed:) U. S. district court, southern dist. of Fla. U. S. vs. The "Lola." Claim and test affidavit. Convers & Kirlin, proctors for cl't. Filed May 28th, 1898. E. O. Locke, clerk.

In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
SCHR. "LOLA" AND CARGO. } Prize.

This cause coming on to be heard and a decree pro confesso having been entered (and final decree of condemnation and forfeiture pronounced)—

Now, on motion of Convers and Kirlin, said decree is set aside, and is permitted to file a claim for said vessel and cargo on account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim, and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered and adjudged and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

JAMES W. LOCKE, *Judge.*

Key West, Florida, May 30, 1898.

(Endorsed:) U. S. district court, southern dist. of Fla. United States vs. Schr. "Lola." Decree. Filed May 30th, 1898. E. O. Locke, clerk.

Whereupon a writ of venditioni exponas was issued to the marshal of said district, commanding him forthwith to sell at public auction the said prize vessel "Lola," her tackle, &c., and to deposit the proceeds thereof with the assistant treasurer of the United States at New York, to the credit of said court.

Which writ was afterwards by the marshal returned, showing the proceeds of said vessel to be the sum of eight hundred dollars, which sum was by the marshal deposited as commanded.

15 District court of the United States, southern district of Florida.
In admiralty.

THE UNITED STATES OF AMERICA
vs.
SPANISH SCHR. "LOLA" AND CARGO. } Prize, No. 15.

To the Hon. JAMES W. LOCKE, *Judge of said Court.*

SIR: I have the honor to report that upon examination of the testimony of the captors in the above-entitled cause, I consider that the following vessels are entitled to share in the prize, they being within signal distance and in position to render assistance if required, viz: U. S. steamer "Dolphin."

Respectfully submitted.

J. K. WINN,
Commander, U. S. N., Prize Commr.

(Endorsed:) Prize No. 15. "Lola." Filed Oct. 3, 1898. E. O. Locke, clerk.

16 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the honorable the judge of the district court of the United States for the [SEAL.] southern district of Florida, greeting:

Whereas lately in the district court of the United States for the southern district of Florida before you, in a cause between The United States, libellant, and the Spanish schooner "Lola" and cargo, Tomas Betancourt, claimant, wherein the decree of the said district court entered in said cause on the 30th day of May, A. D. 1898, is in the following words, viz:

"This cause coming on to be heard and a decree pro confesso having been entered (and final decree of condemnation and forfeiture pronounced).

"Now, on motion of Convers and Kirlin, said decree is set aside, and is permitted to file a claim for said vessel and cargo on account of said vessel being a fishing vessel and therefore not liable to seizure; and said case again coming on to be heard upon such claim and the court not being satisfied that as a matter of law, without any ordinance, treaty, or proclamation, fishing vessels of this class are exempt from seizure, it is ordered and adjudged and decreed that said vessel and cargo of fish be condemned and forfeited and sold.

JAMES W. LOCKE, *Judge.*"

"Key West, Florida, May 30, 1898."

as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

17 And whereas in the present term of October, in the year of Lord one thousand eight hundred and ninety-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree that the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with damages and costs.

January 8, 1900.

And afterwards, to wit, on January 29, 1900, the following order was entered by said Supreme Court, viz:

On consideration of the motion to modify the decree entered herein by this court on January 8, 1900, and of the argument of counsel thereupon had, as well in support of as against the same, and to secure the carrying out of that decree, and of the opinion delivered on the same day, according to their true meaning and intent.

It is now here ordered by the court that said decree be, and the same is hereby, modified so as to direct that the damages to be allowed shall be compensatory only, and not punitive.

You therefore are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the

18 United States ought to be had, the said appeal notwithstanding.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of February in the year of our Lord one thousand nine hundred.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Supreme Court of the United States. No. 396, October term, 1899. The Spanish schooner "Lola" &c. vs. The United States. Mandate. Filed this 19th day of Feby., 1900. E. O. Locke, clerk, by Louis Starke, deputy clerk.

19 At a stated term of the United States district court for the southern district of Florida, held at the city of Jacksonville, this —— day of March, 1900. Present: Honorable James W. Locke, judge.

THE UNITED STATES, LIBELLANT,
against
THE SPANISH SMACK "LOLA" AND CARGO,
Tomas Betancourt, claimant.
} Interlocutory decree.

A final decree having been entered herein on May 30th, 1898, adjudging and decreeing that the said "Lola" and her cargo of fish be condemned, forfeited, and sold as lawful prize of war, and the said vessel

and cargo subsequently, and by order of this court, having been sold under and pursuant to the said decree, and the proceeds of said sale having been duly paid into the registry of the court;

And the proctors for the claimant having this day presented to this court the mandate of the Supreme Court of the United States, dated February 13th, 1900, wherein it is recited that the cause has been heard before that court on the appeal of the claimant, to wit, on January 8th, 1900, ordered, adjudged, and decreed that the aforesaid decree of this court be, and the same was, by the said decree reversed, and that the cause be remanded to this court, with directions to enter a decree
20 that the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with damages and costs;

And the said mandate having further provided, to secure the carrying out of the said decree made by the Supreme Court on January 8th, 1900, and of the opinion delivered on the same day, according to their true meaning and intent, that the damages to be allowed shall be compensatory only, and not punitive:

Now, on motion of Convers & Kirlin, proctors for the claimant, it is hereby ordered, adjudged, and decreed—

(1) That the said mandate be filed, and that the said judgment of the Supreme Court of the United States be, and the same hereby is, made the judgment of this court;

(2) That the libel herein be, and the same hereby is, dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs; the question whether such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages;

(3) That the clerk of this court do cause to be paid over forthwith to the proctors for the claimant the amount of the proceeds of the sale of the said vessel, and of any sale of her cargo, now on deposit and subject to the cheque of this court;

(4) That it be referred, by request of the parties, to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court, with all convenient speed, the amount of the compensatory
21 damages to be recovered by the claimant herein, in conformity with this decree, and with the opinion and decrees of the Supreme Court herein.

Done in open court this April 5, 1900.

JAMES W. LOCKE, *Judge.*

Approved as to form:

HENRY M. HOYT,
Assistant Attorney-General of the United States.

JOS. K. MCCAMMON,
JAMES A. HAYDEN,
Of Counsel for Captors.

22 United States district court, southern district of Florida.

THE UNITED STATES, LIBELLANT,
against
THE SPANISH SMACK "LOLA" AND CARGO,
Tomas Betancourt, claimant.
} Stipulation.

It is hereby stipulated and agreed between the United States, the naval captors, and the above-named claimant, that upon the decree entered or to be entered by this court herein, providing that the proceeds of sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with compensatory damages and with costs, in accordance with the mandate of the Supreme Court of the United States in this case, such damages and costs shall be charged against the United States or the naval captors or apportioned between the United States and the naval captors, as to justice may appertain and as the legal responsibility therefor may appear; and that either party shall have the right to review the decree entered pursuant to the said mandate on the question of the amount of damages, and the United States, the naval captors, or the claimant shall have the right to review such decree
23 on the question whether the ultimate legal responsibility for such costs and damages rests upon the United States or the naval captors.

Dated New York, February 2, 1900.

HENRY M. HOYT,
Assistant Attorney-General for the United States.
JOS. K. MCCAMMON,
JAMES H. HAYDEN,
Of Counsel for Captors, Solicitors for Certain Captors.
CONVERS & KIRLIN,
Proctors for the Claimant.

(Endorsed:) United States district court. The United States, libellant, against the Spanish smack "Lola" and cargo, Tomas Betancourt, claimant. Interlocutory decree. Convers & Kirlin, proctors for claimant. Filed Apr. 5, 1900. E. O. Locke, clerk.

24 United States district court, southern district of Florida.

SPANISH SCHR. "LOLA." Prize No. 15.

Clerk's statement.

Proceeds of sale deposited		$800.00
Paid fees prize commissioners and expense	$35.80	
" " clerk	41.75	
" " marshall and expenses	502.29	
		$374.84
" claimant under decree of April 5th, 1900		$425.16

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Lola." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

25 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES,
vs.
SPANISH SMACK "LOLA" AND CARGO.

Ordered that Joseph A. Springer, esqr., of Havana, Cuba, be and he hereby is appointed to take testimony in said case, and upon filing interrogatories and cross-interrogatories by the counsel of parties interested herein, the clerk of this court issue commission in due form for that purpose.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., June 28, 1900.

(Endorsed:) U. S. district court, southern district of Florida. United States vs. Spanish smack "Lola." Order appointing commissioner to take testimony. Filed June 30, 1900. E. O. Locke, clerk.

26 In the district court of the United States, southern district of Florida.

UNITED STATES,
vs.
"LOLA," SEVERO GONZALES, CLAIMANT.

Interrogatories to be propounded to Severo Gonzales, a witness in behalf of claimant.

1st interrogatory. State your name, age, occupation, place of residence, and where you resided during the months of April and May, 1898.

Second interrogatory. State, if you know, who was the owner or owners of the Spanish fishing smack "Lola," captured off the coast of Cuba the latter part of April, 1898, by the U. S. Navy, during the late war between the United States and Spain, and state, if you know, what was the value of said vessel at the time of capture, and state the facts on which you base your valuation.

3rd interrogatory. State, if you know, how much said vessel usually earned for her owner or owners per month and your means of information as to her earnings.

4th interrogatory. State whether the owner of said vessel has an agent in the United States duly authorized to represent him in this suit. If yea, state his name and place of residence.

5th interrogatory. If you know of any other facts that would be beneficial to either party in this suit, please state them as fully as if specifically interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimant.

27 *Interrogatories to be propounded to Juan Lluria y Pujadas, a witness for claimant.*

1st interrogatory. State your name, age, residence, and occupation, and where you resided during the months of April and May, 1898, and prior thereto.

2nd interrogatory. If you should state in answer to the first interrogatory that you held an official position under the Spanish Government at Havana, Cuba, state whether you were required by virtue of said position to inspect and examine and value Spanish fishing smacks that entered the harbor of Havana; and if yea, state whether during the months of April and May, 1898, or at any time prior thereto that year, you inspected and valued the Spanish fishing smack "Lola," and what was the valuation you placed upon said vessel and state the facts upon which you based your valuation.

3rd interrogatory. If you know anything else that would be beneficial to either party to this suit, please state fully as if specially interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimant.

28 *Interrogatories to be propounded to Francisco Gandon and Antonio Suarez, witnesses on behalf of the claimant, to be answered by each separately.*

1st interrogatory. State your name, age, and occupation, and whether you resided in Havana, Cuba, during the month of April and May, 1898.

2nd interrogatory. State whether you bought and sold fresh and salted fish during the months of April and May, 1898, and whether you were familiar with the market prices of fresh and salted fiish in Havana during said months; if yea, state the price of each.

3rd interrogatory. If you know anything else that would be beneficial to either party to this suit, please state as fully as if specially interrogated thereto.

J. M. PHIPPS,
Of Counsel for Claimant.

29 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"LOLA," SEVERO GONZALES, CLAIMANT.

The libellant by its attorney, objects to the fourth interrogatory, upon the ground that it tends to elicit answers which are not pertinent to the issue.

First cross-interrogatory. How long have you known the "Lola;" state her gross and net tonnage; state when and where she was built.

Second cross-interrogatory. State, if you know, when and where she was purchased by the present claimant, and give the name and present place of residence of the person from whom the purchase was made.

Third cross-interrogatory. How much did the present claimant pay for said vessel? State how and in what the payments were made; whether in money or in other property, and if in the latter state what it was. State at length and in detail, all the facts connected with the purchase of said vessel.

Fourth cross-interrogatory. In what business was the vessel engaged,

from the time of her purchase by the present claimant, up to the time of her capture?

Fifth cross-interrogatory. If you state that she was engaged in the fishing business, state whether or not she was engaged in other business; and if so, how long and the nature thereof; state fully.

30 Sixth cross-interrogatory. State how the seamen operating said vessel were compensated—whether they were paid wages or a percentage of her earnings.

Seventh cross-interrogatory. State how many trips she made in the two years next preceding her capture; give the date of departure and entry of each trip; the quantity of fish captured each trip; the amount realized from the sale of each cargo; what part of said cargo went to the owner and how much to the seamen.

Eighth cross-interrogatory. Did the owner keep books with reference to the business of this vessel? If yea, produce the same to the commissioner and file, with your answer to this interrogatory, transcripts showing the receipts and disbursements of this vessel for two years next preceding her capture.

Ninth cross-interrogatory. Give the names of the captains and mates of this vessel from the time she was first owned by the present claimant up to the time of her capture and their present places of residence. Also give the names of the sailors, or fishermen, employed on this vessel for two years next preceding her capture and their present places of residence.

Tenth cross-interrogatory. State whether or not any repairs were made upon this vessel during the time she was owned by the present claimant; and if so, give the dates when the same were made, the nature and extent thereof, the names of the persons making the repairs, and the amount paid on each occasion, if more than one.

United States Attorney.

31 *Cross-interrogatories to be propounded to Juan Lluria y Pujadas, a witness for claimant.*

The libellant objects to the second interrogatory propounded to Juan Lluria y Pujadas upon the ground that said interrogatory does not seek information as to the competency of the witness to testify upon the subject about which he is interrogated.

First cross-interrogatory. If in answer to the second direct interrogatory you answer that you hold an official position under the Spanish Government at Havana, state what it was.

Second cross-interrogatory. State whether or not you were required to keep records of the transactions of your office.

J. N. STRIPLING,
United States Attorney.

32 *Cross-interrogatories to be propounded to Francisco Gandon and Antonio Suarez, witnesses in behalf of claimant, to be answered by each separately.*

The libellant objects to the second direct interrogatory addressed Francisco Gandon and Antonio Suarez upon the ground that the price of fresh

and salted fish in Havana during the months of April and May, 1898, during which time said city was blockaded by war vessels of the United States, should not be used as a basis for assessment of damages.

United States Attorney.

33,34 In the district court of the United States, southern district of Florida.

THE UNITED STATES
vs.
"LOLA," SEVERO GONZALEZ, CLAIMANT. } In Prize.

Now come the captors by McCammon and Hayden, their proctors, and without admitting that they would be responsible for any costs or damages which would be awarded in this cause, enter objections to the interrogatories which the claimant proposes to propound to the following witnesses, in the course of depositions to be taken under a commission directed to J. A. Springer, esq., at Havana, Cuba: Severo Gonzalez, Francisco Gandon, and Antonio Suarez.

Interrogatories to be propounded to Severo Gonzalez.

Third interrogatory. Objected to as incompetent, irrelevant, and immaterial for the reason that it is provided by the decree of the Supreme Court of the United States herein that the damages allowed to the claimant shall be compensatory only. The usual earnings per month of the "Lola" in time of peace would not tend to show what sum she could have earned during the period covered by the war between the United States and Spain, when she would have been prevented from following her customary business by the blockades of Havana and other Cuban ports.

Interrogatories to be propounded to Francisco Gandon and Antonio Suarez.

Second interrogatory. Objected to as incompetent, irrelevant,
35 and immaterial for the reason that the market prices of fresh and salted fish in Havana during the month of May, 1898, and a portion of the month of April, 1898, during which the United States and Spain were at war, can not be taken as a fair basis for determining the value of the cargo of this vessel, for the reason that the port of Havana was blockaded by a naval force of the United States during the said period, and prices of food supplies were thereby greatly increased. The vessel, though not liable to capture, had no right to enter a blockaded port. The value of her cargo should be determined by the prices of fish in ports not blockaded.

McCAMMON & HAYDEN,
Proctors for Captors.

36 In the United States district court for the southern district of Florida.

UNITED STATES
vs.
"LOLA," SEVERO GONZALES, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court, fifth circuit of the United States, southern district of Florida, to me directed, I have caused Severo Gonzales, Juan Lluria y Puhadas, Francisco Gandon, and Antonio Suarez, the witnesses in said commission named, personally to come before me, who, having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Severo Gonzales answers and says as follows:

My name is Severo Gonzales; I am 71 years of age; am engaged in the fishing business; I reside in Guanabacoa, Maximo Gomez St., No. 2, and I resided there at the period mentioned.

To the second interrogatory he answers and says:

The sole owner of the "Lola" was myself; the vessel was valued at $5,000. I base my valuation upon the fact that I made considerable repairs and improvements upon her after I had purchased her.

To the third interrogatory he answers and says:

I calculate the "Lola" made about 20 to 22 % per annum upon the amount representing her capital; her monthly earnings varied according to the number of trips during a month, which were generally one, and sometimes two per month, dependent upon the weather,
37 usually making 14 trips a year.

To the fourth interrogatory he answers and says:

Mr. Ramon Alverez, who resides in Key West, is my duly authorized agent and attorney in fact in this business.

To the fifth interrogatory he answers and says:

I have nothing further to state specially.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Lola" since I became her owner in 1887; her tonnage gross and net appears on her "rol" and the other ship's papers seized at the time of her capture.

To the second cross-interrogatory he answers and says:

I obtained this vessel by purchase from Don Fernando Burrenso y Abad, as is shown by the copy of her bill of sale on February 22nd, 1887; I do not know his present address.

To the third cross-interrogatory he answers and says:

I do not at this moment recollect how much I paid for the vessel, it was in Spanish gold, and I believe I obtained it at a cheap price; I afterwards had to careen her at the Zaldo "varadaro" or shipyard and make extensive repairs on her, after which she was appraised in $5,000 Spanish gold.

To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

Has always been engaged in the fishing business.

To the sixth cross-interrogatory he answers and says:

The seamen or fishermen were paid by a percentage on the vessel's earnings, in the usual manner of two-thirds of receipts from sale of
38 cargo, after deducting 75 cents per quintal for cherna, and $1 per quintal for "pargo," which was of the nature of an allowance to the vessel for expenses.

To the seventh cross-interrogatory he answers and says:

I can not state, because the business of each trip was settled then and there at the time; generally she made 12 to 14 trips a year; I can not state the exact date of departure and entry of each trip, but estimate the latter to be 12 to 14,000 lbs. of fresh fish, and of salted, according to circumstances, say 50 to 80 quintals; nor do I remember the amount realized on each trip or cargo. Of this, however, one-third went to the owner, and two-thirds to the seamen after deducting the usual allowance as hereinbefore mentioned. I here desire to state that I hold myself responsible and promise to pay over to the seamen proportionately the portion of any payment that may be awarded me in settlement of this suit, and due them.

To the eighth cross-interrogatory he answers and says:

I kept no books whatever of the business of the vessel, but presume that these particulars appear in those kept by Don Domingo Trocha y Gasparon, and also the firm of Vilar Senra & Co., to whom I delivered the fish regularly, and with whom I settled upon each trip. This refers to live fish, which had to be delivered at once, it being customary for the "patron" of the vessel to sell salted fish as opportunity offered, and to make returns of such sale to the owner.

To the ninth cross-interrogatory he answers and says:

The name of her "patron" or master, from the time she became my property, was Tomas Betencourt, who resides in Regla. I can not state the names of the seamen of the "Lola" may have previously had, because the "patron" shipped and discharged the crews, but their names should appear on the crew lists of the vessel already filed.

39 To the tenth cross-interrogatory he answers and says:

I had to make the vessel almost over again after I purchased her in 1887, fitting her out with sails, blocks, and rigging, wood, and iron work, etc.; I can not state the dates nor particularize the amount of repairs, but they were made under Miguel Maso, and were paid for in gold for all the daily labor expended and materials, and after everything had been paid for the vessel was appraised in $5,000.

And further, this deponent saith not.

SEVERO GONZALES.

Answered under oath and subscribed before me, at Havana, this twenty 8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

40 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes St., and am a shipwright—a master ship carpenter

and builder—by occupation. I am also maestro mayor de bahia, or harbor master of the port. At the time mentioned. April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente, or deputy, for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Lola" to be worth, on March 1st, 1898, $5,000.00 Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co. and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Lola," to be filed for convenience with this declaration.

Exhibit A.

41 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, caluation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty 8th day of August, 1900.

JOSEPH A. SPRINGER, *Commissioner.*

[Translation.]

42 I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March of this year:

Do hereby certify that, owing to the constant inspection which I make of such vessels in my official capacity, the fishing smack "Lola," registered folio 2002, of 35 tons burden; wooden hull; schooner rigged; rigging tight and staunch; sails and gearing complete; with the necessary iron ballast; capstan, two anchors and chains; galley caboose and outfit; sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,000.00 Spanish gold. * * *

In testimony whereof I issue this certificate, at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement, annexed to answers of above witness, to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Lola."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit A. At the execution for the examination of witnesses between the United States vs. "Lola," Severo Gonzales, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

43 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal and fresh fish was sold at the same price, $10 (ten dollars) silver per qq.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDN.

Answered under oath and subscribed before me, at Havana, this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

44 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna St.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish and salted fish, and was familiar with the market

price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st, the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me, at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 CITY OF HABANA, *Island of Cuba:*

Be it remembered, That on the days and year within mentioned, before me, the undersigned, personally came Messrs. Severo Gonzalez, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reduced to writing in English, and read to them by me, the commissioner, in Spanish, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal, at the city of Habana, the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States vs. "Lola," Severo Gonzalez, claimant. Commission. Filed Sept. 3, 1900. E. O. Locke, clerk.

46 In the United States district court, southern district of Fla.

IN RE FISHING SMACK CASES.

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

Q. What position did you hold under the United States, if any, in the month of June, 1898?

A. United States marshal.

Q. For the southern district of Florida?
A. For the southern district of Florida.
Q. Were you acquainted with the Spanish fishing smack "Quatro de Septembre?"
A. Well, she was a prize brought in there. I saw her.
Q. Did you sell her?
A. Yes, sir.
Q. In a condemnation sale?
A. Yes, sir.
Q. State what she brought, please?
(Objected to as immaterial and irrelevent, and as not affording the proper measures of damages in this case.)
By COMMISSIONER: I will state, Mr. Stripling, that I will take cognizance of what they brought as a matter of record.
A. Four hundred and seventy dollars.
Q. Where have you resided, Captain, most of the time since the civil war?
A. In the United States; the last twenty-five or thirty years in Florida, at Key West.
Q. Have you ever owned any sailing vessels?
A. Yes sir; small sailing vessels.
47 Q. How many?
A. I have been interested in six or more vessels. I have owned, built, and partly owned six or more.
Q. Captain, have you kept yourself posted, during your residence in Key West, of the value of vessels of the character of the "Quatro de Septembre?"
A. I wouldn't like to say that I have. She is a fishing smack, and a class of vessel I haven't had anything to do with.
Q. You saw her?
A. Yes, sir; small vessel.
Q. No material difference between that vessel and any other sailing vessel of the same type, except in the fact that she had a well in her?
A. Yes, she had a well.
Q. Does that add very materially to the cost of a vessel?
A. It would some.
Q. I am talking about the cost of construction?
A. I don't know. Cost more, I suppose; how much more I would not like to say.
Q. About what percentage would you estimate it cost more than an ordinary vessel?
(Objected to. Captain Horr says that he has had no experience in it.)
Q. From your knowledge of the construction of boats generally, would a vessel of this character necessarily be more expensive in constructing?
A. Yes, I think so; a little.
Q. What percentage would you say?
(Objected to on the ground that no sufficient foundation laid.)
A. I don't know.
Q. Captain, can you give an estimate that is based on figures and a knowledge of boats so as to reliably be an estimate?
A. I hardly think it will be a reliable estimate.

48 Q. Well, from the appearance of this vessel and the examination you made of it while she was in your custody, what would you consider a fair valuation for her?

(Objected to on the ground that the witness has stated that he has had no experience with fishing smack vessels and their values, and that there has been no statement of the witness, as yet, that he has made a sufficient examination of the vessel upon which to form the ground for an expert opinion.)

Q. State what kind of examination you made of her, Captain?

A. I don't recollect that I made any particular examination of her; I examined some of them, and went into their hold, but can't remember which ones. I recollect one that I made a pretty thorough examination of.

Q. These parties value their vessel at $5,000.00. From her appearance at the time she was in your possession, what would you consider a fair valuation for her?

(Objected to on the ground that the value of this vessel is to be determined upon the fact that this vessel was a Spanish or Cuban fishing vessel. Objection sustained, to which ruling counsel for the Government excepts.)

A. I would say one thousand dollars at the outside for that vessel. It is pretty fair to assume that she would not bring any more than that, or those fish men around there would have got her.

(Motion to strike the answer, on the ground that no proper foundation has been laid for the question, and the further ground that the value at Key West, of which the witness speaks, is improper and irrelevant. Motion is granted, to which counsel for the Government excepts.)

Q. You have stated that one thousand dollars, in your opinion, would be a fair valuation for this vessel. Now state fully upon what you base that estimate.

49 (Same objection.)

A. According to her age and condition at the time of sale, and the price that she sold at.

Q. State whether or not she was a newly built vessel.

A. My impression is that she was one of the old boats.

Q. Do you know what the cost per ton to build a vessel of that kind is?

(Same objection.)

A. No; I do not. I know what it would cost per ton at Key West; know what I have had them offer to build for me for.

Q. About how much?

(Same objection.)

A. I know of one contract which was let at ninety dollars per ton for building a wooden vessel. Now, that ninety dollars does not mean running, rigging, anchors, chains, etc.

Q. Now, do you remember the "Poder de Dios?"

A. Only in a general way——

Q. How much did she sell for?

(Same objection.)

A. My recollection is a little over a thousand dollars; a thousand and ten dollars she sold for.

Q. She is valued by the owner at four thousand dollars; do you consider that a fair price for her?

(Objected to as immaterial and irrelevant as applied to American vessels' value, and also because sufficient foundation has not been laid for the question.)

A. I consider it excessive, estimating the value in this country.

Q. What would you consider a fair price for her, from your recollection of her condition?

(Same objection.)

A. Now, I suppose you mean to Key West, do you?

Q. Yes, sir.

50 A. I would say twenty-five hundred dollars. I don't recollect the exact condition of this boat; some of them were run down and some were in pretty good condition; it is hard for me to distinguish at this time.

Q. You sold the "Espana," didn't you?

A. Yes, sir.

Q. This vessel is valued by the owner at nine thousand dollars. State from your present knowledge of her condition whether you consider that excessive, and what you would consider a fair valuation for her.

(Same objection.)

A. I consider nine thousand dollars excessive. She was a Cuban-built boat, and at that time fourteen years of age, and I consider three thousand or thirty-five hundred dollars a fair valuation.

Q. How much did she sell for when you sold her?

(Same objection.)

A. Thirteen hundred and ten dollars.

Q. The "Paquete Habana;" she is valued at forty-five hundred dollars by the claimants in this case. From your present recollection of her appearance and condition, state whether or not this is excessive; and if so, what, in your opinion, would be a fair valuation?

(Same objection.)

A. The "Parquete" was a small sloop smack. I don't recollect about her age. I knew about her age at that time, but don't recall now. She sold for four hundred and ninety dollars. Considering her age and size I would think fifteen hundred dollars would be a fair valuation for her.

Q. The "Oriente," according to this testimony, is forty-six and fifty-one hundredth tons. Do you remember that vessel?

A. No; I don't remember her particularly. She was one

51 of the largest.

Q. She was valued at five thousand dollars. State whether or not you consider that a fair valuation.

A. Considering her age, I consider it excessive.

Q. From your recollection of the age and condition of the boat, what would you consider a fair valuation?

(Same objection.)

A. It is a difficult matter for me to remember the condition the boat was in. I can't possibly place a valuation, on account of not recalling her condition.

Q. Did you sell the "Engracia?"

A. Yes, sir.

Q. What did she bring?

(Objected to as immaterial and irrelevant, and not constituting a proper measure of damage.)

A. Sold for one thousand dollars.

Q. The claimants to that vessel value her at five thousand five hundred dollars. From your present recollection of that vessel and her condition, state whether or not you consider that a fair valuation; and if not, what would you consider such?

(Objected to as immaterial and irrelevant, as far as regards value at Key West, and further, on the ground of insufficient foundation has been laid for the question.)

A. I consider five thousand and five hundred dollars excessive, but can not recall the condition of the vessel sufficiently well to estimate her value at Key West further than the price realized at the sale.

Q. How much did she bring?

(Same objection.)

A. One thousand dollars.

Q. Did you consider the price that she brought at that time under her real value; and if so, how much?

52 (Same objection.)

A. I can not recall well enough.

Q. Do you remember the "Santiago Apostel?"

A. Yes, sir.

Q. According to the testimony here she appears to have been built in 1890, and, if valued at one thousand dollars, state whether or not you consider that a fair valuation.

(Same objection.)

A. I consider it excessive in Key West.

Q. What would you consider a fair valuation for her, assuming that she was built in 1890, and cost nine thousand and eighty dollars originally?

(Same objection.)

A. I would consider five thousand dollars about her value in Key West.

Q. How far is Key West from Havana?

A. Eighty-five miles.

Q. "Antonio Suarez." This vessel is valued at ten thousand dollars Spanish gold. You sold the "Antonio Suarez" also?

A. Yes, sir.

Q. How much did she bring?

(Objected to as immaterial and irrelevant and as not affording a proper measure for damage.)

A. Twelve hundred and sixty dollars she sold for.

Q. State whether or not you consider that a fair valuation.

(Objected to as irrelevant and immaterial and not affording a proper measure of damages. To avoid a repetition of the objections, it is understood that the objections to the prices realized for the boats in Key West is taken subject to the objection of counsel for the claimant; the

53 said objection is that the testimony is immaterial and irrelevant, and does not afford proper measure for damages; and that the opinion of the witness as to the valuation of vessels in Key West is

immaterial and irrelevant and does not afford proper measure for damages, and that the proper foundation has not been laid for the formation of an expert opinion. It is understood that the same rulings and exceptions are deemed to apply in each case.)

A. I consider it excessive. Considering her age and everything, three thousand dollars at the outside.

Q. Captain, the "Serverita" is valued at eight thousand dollars, state, from your present recollection of the boat and her condition, whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive.

Q. What would you think a fair valuation?

A. I can't recall her condition well enough to place a valuation on it. I would say the eight thousand dollars excessive, from her tonnage and her age. Her tonnage could be rebuilt at Key West for much less.

Q. Did you sell the "Fernandita?"

A. Yes, sir.

Q. How much did she bring?

A. Five hundred dollars.

Q. The "Fernandira" is valued at five thousand and five hundred dollars by the present claimants. State whether you consider that excessive.

A. Very much so, sir.

Q. What would you consider a fair valuation for her?

A. I don't recall her condition well enough to place a valuation on her.

54 Q. You sold the "Lola," did you?

A. Yes, sir.

Q. How much did she bring?

A. Eight hundred thousand dollars.

Q. She is valued by the present claimants at five thousand dollars; state whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive in the United States—in Florida and Key West—because I know such a vessel could be built for considerably less money.

Q. "Antonio y Paco;" this vessel is valued on the first of January, 1898, by the present owner, at eight thousand two hundred and fifty dollars. State from your present recollection of her condition whether or not you consider that a fair valuation.

A. I do not; I consider it excessive.

Q. What would you say was a fair price for her?

A. Taking into consideration the prices that boats sold for that were taken to Havana, I would consider thirty-five hundred dollars a fair price for that vessel. I make this answer believing that this vessel was formerly the "Emma Lowe."

Q. Have you any knowledge of what it cost to build the "Emma Lowe" in Key West?

A. My impression is that John Lowe said that she cost him five thousand dollars, or it may have been a little more than that. After several years he sold her for thirty-five hundred dollars.

Q. Did he sell her on account of depreciation, or the tariff on the fish business?

A. I assume that it was on account of the fish tariff.

Cross:

Q. Captain, all of the values that you have given with reference to the different vessels have been values at Key West?

A. Yes, sir.

55 Q. You don't propose, as I understand it, to speak of values in Havana?

A. No, sir; don't know anything about them other than what I have known them to pay for vessels coming over to Key West.

Q. Do you know anything about exchanging or transferring a foreign vessel to the Cuban flag, and obtaining license to engage in the fishing business in Havana?

A. No, sir.

Q. You have carried in your mind, I judge from the figures you have given, a notion that boats can be duplicated in Key West, Fla., at about ninety dollars a ton?

A. Yes; that is what they offer to build at.

Q. Now, these offers to build, in respect of which you have testified, have not been for the building of fishing vessels, have they?

A. No, sir.

Q. Are you speaking of ordinary smacks?

A. Yes, sir.

Q. Now, it is a fact, is it not, that the bulkhead of these tanks have to be made practically as strong as the vessel, and that the location of a tank in a vessel interferes with the placing of the beams as they would be placed if there were no tanks?

A. No; not the beams, but it is the ribs—the fore-and-aft stringers and the ribs.

Q. And the strength which would otherwise be obtained from braces, which have to be sacrificed in a construction of tanks, must be provided for in some other way in the construction of a fishing boat?

A. Yes, sir.

Q. Then, would this not add to the cost of construction?

A. Yes, I think it would cause a certain difference in the cost

56 of construction.

Q. Of which do you not advance any opinion?

A. Other than in a general way.

Q. Without any experience as to the building of fishing boats?

A. No, sir; none whatever as to fishing boats; I have built a sloop and rebuilt a vessel or two, but have never built any smacks.

Q. Now, Captain, in placing these values of the different vessels at the figures that you have given, where you have given figures, you have not been informed as to whether the boats have been repaired, rebuilt, or overhauled in Cuba, and I understand you to say you have made no special examination of the construction of most of the boats?

A. With the exception of two, I made no careful examination.

Q. The employment of boats of this class from Key West would no longer be profitable, would it?

A. No, sir; not with the laws that they had at that time.

Q. When did the change in the laws to which you now refer take place?

A. I think it must have been in 1897 or 1898.

Q. And, about that time, were all boats of that class, that were then under the American flag, go out of business?

A. I think they did.

Q. What was the change of law?

A. Well, I always supposed it was on account of an import duty put on fish over in Cuba.

Q. These changes of law you speak of were in Cuba?

A. Yes, sir.

Q. When the American fishing boats of that class were engaged in the fishing business what was their principal market?

A. Havana.

Q. And it was some discriminating restrictions that were imposed there that drove them out of the business?

A. Yes, sir; either port duties or duties on fish.

57 Q. Now, Captain, it is a pretty difficult matter, is it not, to form much of an opinion of the value of a boat built some years ago, when you do not know how well she has been kept up and rebuilt and repaired?

A. Yes, sir; a man who is not familiar with a boat's construction, it is pretty hard to get at her value.

Q. Some old boats, when rebuilt, are practically as good as new, are they not?

A. I think so; yes, sir.

Q. Now, prior to the time that my learned friend here requested you to come in and express your opinion of these boats, have you turned these questions over in your mind since you sold them three years ago?

A. No, sir.

Q. And the opinions that you have expressed were those that occurred to you at the moment of your examination, without any previous examination?

A. Yes, sir.

Q. At the time you saw the boats, and sold them, you were marshal of the court for this district?

A. Yes, sir.

Q. Are you still the marshal for this district?

A. Still the marshal of this district.

Q. What became of the fish that the boats had on, do you know?

A. Well, quite a number were distributed to the crews of these vessels, and some were given to the revenue cutters, and a good many died and were dumped overboard.

Q. The vessels were in custody quite a long time before they were sold, were they not?

A. Yes, sir; they were sold the 27th of June, if I recollect. They were there the last ones; a month and a half.

58 Q. There was no sale of any fish, was there?

A. No, sir.

Q. There is nothing in the records to show any returns or proceeds of the fish?

A. No, sir; we thought of trying to sell them, but there was no market for the fish then, so we distributed them.

(Endorsed:) United States vs. Schr. "Lola." In re Fishing smack. Evidence taken before commissioner E. O. Locke. Filed Aug. 6, 1901. E. O. Locke, clerk.

59 In the district court of the United States, southern district of Florida. In Admiralty.

UNITED STATES OF AMERICA,
vs.
"SEVERITA," "SANTIAGO APOSTOL," "FERNANDITO," "Espana," "Poder de Dios," "Antonio Suarez," "Oriente," "Cuatro de Septiembre," "Antonio y Paco," "Lola," "Engracia," and "Parquette." } Claims by owners for compensation.

The examination of witnesses, de bene esse, beginning on the 7th day of October, 1901, on behalf of the United States, before me, Beverly B. Whalton, county judge of Monroe County, Florida, at my office in the city of Key West, in said county, in the above-entitled cause.

It is hereby stipulated and agreed by and between counsel for the United States and the claimants, respectively, that the testimony hereto appended and taken as aforesaid may be written and transcribed by a stenographer, and that the several signatures of the respective witnesses, whose testimony is hereto appended, are severally waived.

I. A. ZACHARIAS,
Assistant U. S. Attorney.

J. M. PHIPPS,
Of Counsel for Claimants.

60 SAMUEL CATES, Esq., a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, place of residence, and occupation.

A. Samuel Cates; age, 54 years; live up in James street, city of Key West; occupation, the sponge business.

Q. How long have you been engaged in the sponge business?

A. I guess about twenty years.

Q. Are you familiar with the selling of vessels and the values thereof?

A. Yes, sir; I know all about it.

Q. What opportunties have you had for observing the selling of vessels and becoming acquainted with the values thereof?

A. Well, in buying and selling, and etc.

Q. You have traded in vessels for some years?

A. Yes, sir; I have.

Q. Do you know the fishing smack "Espana," seized as prize in the late war?

A. Yes, sir.

Q. Did you make an examination of that boat?

A. I did, after I bought it.

Q. About when was that?

A. I could not answer.

Q. Approximately, when?

A. Somewhere about the time the Spanish-American war was declared I bought it and examined it.

Q. You say you bought the "Espana?"

A. Yes, sir.

Q. What did you pay for her?

A. I paid $1,310.00 for her.

61 Q. What was the result of your examination of said vessel?

A. Well, in examining her I found that the vessel was in a pretty bad condition—the hull, and some of her sails.

Q. Was the price you paid for her a fair value?

A. Well, no, sir; I didn't think it was a fair value. I thought the vessel was worth more than she brought. Well, I offered to sell it to the owners for $3,500. They would not give that much money.

Q. What did you sell it for?

A. For $2,500.

Q. About what was her tonnage?

A. Was 53 tons when I bought it. Afterwards she was cut down some and remeasured to 48 tons.

Q. What repairs did you put on her before selling her?

A. Well, I don't know about how much repairs I put on her.

Q. State what they were.

A. Well, I had some pieces put into her planks, and I had some timbers put on her bow. I think that was about all the repairs I had done.

Q. You say her hull was in a fair condition?

A. Yes, sir.

Q. Under what circumstances was this vessel purchased by you?

A. Well, she was taken by ships, I believe, and brought here and she was sold by the Government, and I bought her at public auction.

Q. Was there much bidding at this?

A. Yes, sir; there was considerable bidding.

Q. Were there many persons present?

A. There were a considerable number of persons present at the time of the auction.

62 Q. Were those persons interested in vessels of this class?

A. There were some in that business and there were lots who were not.

Q. This you say was at the sale made by the marshal at public auction?

A. Yes, sir.

Q. That is when you bought this vessel?

A. Yes, sir.

Q. Did you at that time examine the vessel called the "Oriente?"

A. No, sir; I did not.

Q. About how old was this vessel when you purchased her?

A. I could not say.

Q. What price did you pay for her?

A. $1,310.

Q. And you sold her for $2,500?

A. Yes, sir.

Q. About what did the repairs cost and did you do them yourself?

A. No, sir; well, all the repairs I had done to her cost from $150 to $200.

Q. Would you say that she was in much better shape after you repaired her than before?

A. Yes, sir; I say she was in a little better shape than when I bought her.

Q. Would you say such repairs increased her value materially?

A. It increased the value a little.

Q. About how much would you say?

A. Well, I say, according to what I had done, about $150 or $200.

Q. No more than the actual amount you expended on her?

A. No, sir.

63 Q. Did you know if any one else than yourself bid on said vessel?

A. Yes; several bid on her.

Q. Were you the highest bidder?

A. Yes, sir.

Cross-examination:

Q. What kind of vessel was this, and what was she employed in?

A. In the smack business.

Q. When you say she was employed in the smack business, do you mean to say the fishing-smack business?

A. Yes, sir.

Q. Have you ever been engaged in buying and selling fishing smacks?

A. No, sir.

Q. Do you know, Mr. Cates, when the tonnage of the "Espana" was reduced here from 58 tons to 48 tons?

A. It was somewhere about that time; I cannot remember rightly when she was taken and brought here.

Q. When was she remeasured?

A. When she was measured here she was 48 tons; I don't know anything about that part of it.

Q. Do you know whether there is any difference between the Spanish rule of measuring vessels and the American rule?

A. No; I don't know that there is any difference.

Q. Had this vessel, the "Espana," been out or reduced before she was measured at Key West by the custom-house authorities?

A. No; she was measured before she was cut down.

Q. Was there any fishing-smack business being carried on

64 between the United States and Cuba at the time or about the time you purchased this vessel?

A. No, sir; there were no smacks here at this time, excepting the smack we bought.

Q. At the time of that sale, of which you have spoken, was there any demand at Key West for fishing smacks?

A. Well, at that time when we bought these smacks, of course we thought there would be a demand for them, but there was none up to that present time.

Q. Is it not a fact, Mr. Cates, when vessels are sold here at public auction, are there not always a large crowd present?

A. Yes, sir; there most generally is.

Q. To whom did you sell that vessel?

A. I sold it to the same owner that it belonged to before.

Q. What did you get for her?

A. I got $2,500.
Q. Why did you sell it?
A. Because I had no use for it.
Q. Did you buy her for speculation?
A. No, sir; I did not buy her for speculation; I bought her with the intention of keeping her.

Redirect:

Q. You said there was no demand for such vessels; you also said there was quite a number of bidders?
A. Yes, sir.
Q. Please explain.
65 A. At that time, I can explain, that before these smacks had come here, we had no demand for them; but when we bought these smacks we bought them with the intention of keeping and using them here. It happened to be there was no demand in that business, so afterwards we could not do anything with them and sold them.
Q. Then your intention to use them for fishing purposes did create a demand for such vessels?
A. Yes, sir; at that time.
Q. By that time, you mean at the time of your purchase?
A. Yes, sir.
Q. Was the war still going on at the time of the purchase?
A. No, sir; the war was over.
Q. You said, in cross-examination, that there is always a crowd present in Key West at the selling of vessels; is that not due to the fact that a large number of people in Key West buy, sell, and trade in sailing vessels?
A. Yes, sir.

WILLIAM D. CASH, a witness in behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. State your name, age, residence, and occupation.
A. William D. Cash; age, 66 years; residence, Key West; occupation, a merchant.
Q. Mr. Cash, are you acquainted with the values of sailing vessels of a similar class?
A. Yes, I am, for the reason that I have bought and sold them during my business career.
66 Q. Do you recollect the sale of the twelve fishing smacks seized as prizes of war during the Spanish-American war?
A. I remember the sale of the fishing smacks; as to the number, I do not know.
Q. State, if you recollect, the date of that sale.
A. I do not recollect.
Q. Do you know the fishing smacks known as the "Poder de Dios" and the "Antonio y Paco?"
A. Yes, sir; I know these two as sold.
Q. Did you, or the firm of which you were a member, purchase the smacks just named by me?
A. The firm of Cash & Curry purchased the smacks "Antonio y Paco" and "Poder de Dios."

Q. At what prices?

A. "Antonio y Paco," $1,910, and the "Poder de Dios," $1,010.

Q. Did you prior to the purchase or subsequently ever make an examination of said vessels for said firm?

A. A few days prior to the sale Mr. Curry and myself went on board of these smacks, made an examination as to their condition and what we thought was their value for purchase.

Q. State what you found to be the condition of said vessels from your examination?

A. From examination we found that the two vessels were in a very fair condition; one of them, the "Antonio y Paco" was of more value than the "Poder de Dios." Then we determined when the sale came off what prices we would pay for one and the other.

67 Q. From your knowledge of the values of sailing vessels would you say that the prices paid by you for each vessel, respectively, were the fair purchase prices?

A. We concluded—at least we set a price that we thought each one was worth, and at the time of sale probably the whole brought less than we expected to pay for them as a matter of speculation if the fishing business opened to them.

Q. Then, I understand you to say that you paid, approximately, the prices which, upon examination, you had concluded would be fair purchase prices for your purposes?

A. Over, either for speculation or put them into the business.

Q. Did you sell those vessels?

A. We sold them.

Q. At what prices?

A. We sold the "Antonio y Paco" for $2,900 and we sold the "Poder de Dios" for $1,500.

Q. Do you know the amount expended for repairs on said vessels?

A. I do not know from memory, but can tell.

Q. From the books?

A. I can tell exactly from the books.

Q. Was there any competition at the sale of these vessels?

A. Yes; there was considerable competition.

Q. When you examined these vessels did you find that any repairs would be necessary to put them in proper condition for use of sailing?

A. To change the speculation we found that it would be necessary to make some repairs; but for matter of sailing we had not considered that proposition whether we should repair them or not; if so, it would be necessary to make some repairs.

68 Q. Do you recollect the tonnage?

A. I do not know.

Cross-examination.

Q. Have you ever been engaged in buying and selling fishing smacks?

A. Yes, sir.

Q. You say in your direct examination that you bought these vessels for speculation, or for the purpose of engaging in the fishing business if that industry should be revised?

A. Yes, sir.

Q. When did you sell those vessels?

A. We sold them a short time after. Mr. Curry sold the vessels while I was away.

Q. Owing to the fact that such sales are largely attended, did not the persons who attended these sales usually pay more or less for vessels of any kind that may be offered for sale?

A. Well, at the time of sale there is of course quite a large number of people gathered there. Some are lookers-on and some are bidders; it is pretty hard for me to tell whether they were bidders or lookers-on. At the time of bidding I think competition was pretty lively.

Mr. MILTON CURRY, a witness on behalf of the United States, being first duly sworn, testified as follows:

Q. Please state your name, age, place of residence, and occupation.

A. Milton W. Curry, age thirty-four years, residence Key West, occupation, a merchant.

Q. How long have you resided in Key West?

A. Thirty-four years.

69 Q. Have you any opportunities for observing the selling of vessels and becoming familiar with the values thereof?

A. Yes, sir.

Q. Have you bought and sold sailing vessels?

A. No.

Q. Have you come in contact or had opportunities to know the facts of purchases and sales of vessels?

A. Yes; I know the prices paid for some smaller size sailing vessels under a hundred tons.

Q. Which do you recollect the sale by the United States of the twelve (12) fishing smacks, seized as prizes of war?

Q. Do you recollect when?

A. It was in the summer of 1898.

Q. Do you know of the fishing smacks "Severita" and "Lola Engracia?"

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you at or near the time of purchase make examination of said vessel?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels and the informotion I received was from the crew, who were on the vessel at the time of seizure.

70 Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

Q. What did you pay for said vessels?

A. $800 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the

age of the vessels at previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing, in reference to their use?

A. I thought that under a change of government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00, the "Severita" for $3,000.00.

Q. After your purchases of them, did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas and I put some repairs on them; I suppose between $50 or $100. I really don't know the estimate. The other repairs were ordinary, such as any other vessel requires in ordinary use, such as painting and etc.

Q. Did these vessels require all these ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked; I made the repairs on her.

Q. Was the "Severita" painted when you sold her, or any other repairs done outside?

A. Nothing that I know.

71 Cross-examination:

Q. Mr. Curry, did you ever buy or sell any fishing smacks other than those you have testified to?

A. No, sir.

JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. John Lowe; residence, Key West; occupation, a merchant.

Q. Have you had opportunities for observing the selling of vessels and becoming familiar with the values thereof?

A. I have.

Q. Have you bought, sold, or traded in sailing vessels?

A. I have.

Q. For what number of years?

A. I have for about thirty years.

Q. Do you recollect the sale of the fishing smacks by the Government?

A. Yes, sir.

Q. About when was that made?

A. I don't recollect the date.

Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"

A. Yes, sir.

Q. Did you make an examination of those vessels at the sale?

A. No, sir.

Q. Did you purchase those vessels?

A. Yes, sir.

Q. What prices did you pay for them, respectively?
A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."
72 Q. Upon what did you base your value?
A. I merely went to the auction on the day of sale out of curiosity, and when these vessels were offered I thought the prices reasonable and I purchased them.
Q. Did you examine them after the sale?
A. Yes.
Q. What did you find their condition to be?
A. Medium fair.
Q. Did you make any repairs on them?
A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.
Q. Did you sell them subsequently?
A. Yes, sir; the "Cuatro de Setiembre" was sold for $1,500 and the "Lola Engracia" for $2,000.
Q. At the time of the purchase by you, would you say, from the condition of the vessels, were the prices paid by you fair?
A. One of them I thought was fair.
Q. Which one?
A. The "Lola Engracia;" the "Cuatro de Setiembre" was sold cheap.
Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?
A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?
A. I do not recollect. About the same time they were all sold to a party, or near the same time.
Q. All disposed of at the same time?
A. Yes, sir.
73 Q. Did you know how these two vessels were equipped, and what was their special equipment?
A. As fishing smacks.
Q. Did you know what was their dimensions when you bought them?
A. Not at the time I bought them.
Q. Whom did you sell them to?
A. To parties in Havana.
Q. Now at the time of this public sale, was there any demand for fishing smacks at this port?
A. I don't think there was.
Q. What did you base your estimate of the valuation of these two vessels on, your own knowledge or from information obtained from others?
A. One of the vessels I knew had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.
Q. Have you ever had fishing smacks built for yourself in Key West; and if so, what was about the cost of building such vessels?

A. I had two built, the "Emma Lowe" and "City of Havana." Each cost me about $10,000.

Q. What was their tonnage?

A. 49 tons.

Q. Was there any fishing-smack business going on at the time of the sale?

A. There was not then.

Q. Mr. Lowe, for what purpose did you purchase these two vessels?

A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?

A. There were several bidders and a little competition.

74 Q. How soon after you purchased these vessels did you make your examination of them?

A. I went on board the same day and put them on the dock about a week afterwards.

Q. Do you recollect the tonnage, approximately?

A. The "Cuatro de Setiembre," 29 tons, and the "Lola Engracia," 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or twenty years old; the "Cuatro de Setiembre," I don't know her age—I should judge she was about ten years old.

Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten yeas, fifteen years, or twenty years?

(Objected to on the grounds that it has been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. State your name, age, place of residence, and occupation.

A. Alfred Atchison; age, 42 years; residence, Key West; occupation, seaman.

Q. How long have you been following that?

A. Twenty-ywo years.

Q. Are you familiar with sailing vessels?

A. I am; sailing vessels under 100 tons.

75 In the course of your occupation and observation, have you become familiar with the value of sailing vessels?

A. Yes, sir; pretty well.

Q. Do you know the vessel "Santiago Apostol?"

A. Yes, sir.

Q. Do you recollect the sale of said vessel by the United marshal?

A. Yes, sir.

Q. Do you recollect the time of that sale?

A. I think it was in 1898.

Q. Did you purchase said vessel?
A. I purchased her.
Q. Did you, at or near the time of your purchase make an examination of the "Santiago Apostol?
A. I did.
Q. State what you found her to be.
A. She was in good condition.
Q. State, Mr. Atchison, her tonnage.
A. I don't exactly what her tonnage was. She had to be remeasured.
Q. Will you state, with reference to the different purchases, what condition you found her to be in, the helm, masts, rigging, and etc.
A. The helm was in good condition. Well, everything else was in a pretty good condition, excepting her mainsail was not in a good condition, but we had used it two or three trips.
Q. Then you repaired her?
A. Made some repairs.
Q. From your knowledge of the value of sailing vessels, what would you say was her value at the time you purchased her?
A. All that depends on condition.
76 Q. Well, what would you consider at that time a fair market value at the time you purchased her?
A. At that time, well, on speculation I suppose about $5,000, she would have brought from the business which I expected to go into when I bought her she would have been worth more.
Q. What did you pay for her?
A. $2,700.
Q. What did you sell her for?
A. $4,000.
Q. Did you consider that a good and fair price for her?
A. Yes, sir; under the circumstances.
Q. Did you get all that you could for her?
A. No; I don't think so.
Q. Then you took less than you could have gotten for her?
A. Yes; because I complicated myself so that I had to sell.
Q. O, I understand you to say that you could have sold to either one of two parties and choose the one who would pay the lesser amount?
A. I could not choose.
Q. To whom did you sell?
A. I sold to parties in Havana.
Q. Did you make any other repairs besides that of the mainsail?
A. Some other repairs which we had damaged ourselves.
Q. Did you at or about that time examine the "Oriente?"
A. Yes.
Q. Did you know her condition?
A. Yes.
Q. About what would you say she was worth?
A. I should judge she was worth about $3,500. I mean this conditionally. I mean that if the Cuban markets were open to us the vessel was worth more. I state if the Cuban markets were closed to us she was worth what you could sell her for.

77 Q. Cuban markets; for what do you mean?

A. For fishing business.

Q. Have the Cuban markets been open to the fishermen of this country since?

A. No; not that I know of.

Q. Then that vessel has not been worth the sum you stated since that time?

A. No; I don't suppose she was.

Q. Could you not get any idea what she is worth here?

A. I suppose about $2,500 or $3,000.

Q. Mr. Atchison, what was your occupation in the early part of the year 1898?

A. I was deputy marshal.

Q. As deputy marshal did you have the fishing smacks in your care or custody?

A. Yes, sir.

Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast and sail?

A. I did, sir.

Q. What was the result?

(Objected to as not being proper cross-examination, except in so far as the question refers to the two vessels referred to in the examination in chief.)

A. All were in generally good condition except one.

Q. Well, from the examination which you made of the "Oriente" what do you consider to be her value?

A. Well, I consider there are other considerations. If the market were free to us to sell fish in Cuba the vessel would have been worth $2,500 to my opinion; not opened to put her on speculation.

78 Q. I understand you to say here that all the vessels were in a good condition?

A. Fair as regular vessels are—as vessels are generally.

Q. Was there any fishing-smack business carried on at Key West with Cuba at the time of this public sale?

A. No.

Q. Do you know whether there was any demand at that time in Key West for fishing smacks?

A. No.

Q. What become of all these vessels?

A. They were all sold back to the people in Havana.

Q. What value were they to the people in the United States if they could not use them in the fishing business?

A. Well, there were some other uses they could have been put to.

Q. Can you estimate the value?

A. No; because there is no business of that character going on between Cuba and the United States.

Q. Did you ever have any fishing smacks built for your own use?

A. No.

Redirect examination:

Q. Do you mean that the fish which might be caught here be valueless to these smacks, except for shipment to Cuban ports?

A. I do.
Q. About how old were these smacks?
A. I do not know the age of any.

79 WILLIAM REEDY, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. What is your name, age, residence, and occupation?
A. William Reedy; age, fifty years; residence, Key West; occupatioe, liquor dealer.
Q. Have you had opportunities for observing sailing vessels and becoming acquainted with the values thereof?
A. I have in years gone by; not so much as to their valuation.
Q. Did you know the vessel "Antonio Suarez," a fishing smack?
A. Yes.
Q. Did you purchase her by the sale of the United States marshal, and about when?
A. The summer of 1898, near the close of the war.
Q. Did you make an examination of the "Antonio Suarez" at or near the time of your purchase?
A. I did.
Q. What did you pay for her?
A. I paid $1,260.
Q. Upon what did you base your estimate of your value upon her?
A. I simply bought her for a party to go in her.
Q. You bought it for the use of Capt. Frank Panier, for what purpose?
A. For fishing purposes.
Q. Was it used for such?
A. Yes; she made one trip.
Q. Did you sell this vessel?
A. I did.
Q. Did you make any repairs on her after you purchased her?
A. I made some repairs on her bulwarks and——
80 Q. For what did you sell her?
A. I sold her for $2,300.
Q. Was that the best price you could get for her?
A. I guess it was. I charged $4,000, but that was all I could get for her.
Q. Did you make any efforts to sell her at higher prices?
A. There was no market for her that I knew of.
Q. Upon what did you base your value, $1,260?
A. Upon information that it was equal to that, and upon information furnished by Cap'. Frank Panier for me.
Q. Was there any competition at this sale at which you purchased?
A. There was quite a number of bidders.
Q. Were you the highest bidder for this boat?
A. I think I was. It was knocked down to me.

Cross-examination:

Q. For what purposes did you purchase the "Antonio Suarez?"
A. For fishing purposes.
Q. Did you intend to fish in American or Cuban waters?

A. I intended to fish in American waters, but to sell in Havana, was my intention when I bought the smack.

Q. Was the "Antonio Suarez" at the time you purchased her fully equipped for fishing purposes?

A. With the exceptions of a few lines; otherwise she was fully equipped.

Q. Was there at this time any fishing business in the port of Key West, or any other business?

A. Nothing more than our home industry for supplying the home market.

81 Q. Was there any demand at that time for vessels of this character of fishing smacks?

A. No; not that I am aware of.

Q. The fishing-smack business between Key West and Cuba had been stopped for many years, had it not?

A. Yes, sir; quite a number of years.

Q. What was the value of the Spanish fishing smack "Antonio Suarez?" State what you think was the value.

A. I was given to understand that she cost $8,000.00 before the war. I would say that *that* she appeared to me almost new; her timbers and planks were in first-class condition.

Q. Why did you sell this vessel?

A. For the simple reason that I did not propose to have her eating her head off; that is the reason why I sold the vessel. She had made one trip. I sold her because it was a dead loss to keep her; in other words, she was an idle expense.

Redirect examination:

Q. Of your own knowledge you did not know what this vessel cost?

A. Nothing more than what I heard from word of mouth that she was worth. I will say that she could not have been built here for that money. She was a better vessel than the one Mr. Lowe said he paid $10,000 for; that is, she was stronger. I mean that she was a better boat.

Q. But you have not knowledge enough of the values of vessels to rely on your own judgment, have you?

A. No, sir.

Q. You bought this vessel from the information of Mr. Frank Panier?

A. That went according to the prices; I did not propose and bid $10,000.00.

82 Q. I mean that you relied on your own judgment, did you not?

A. I knew enough to know that the price of the vessel was really worth the money.

WILLIAM B. CURRY, a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, residence and occupation.

A. William B. Curry; 47 years of age; residence, Key West, Fla.; occupation, an auctioneer.

Q. Are you familiar with the value of sailing vessels?
A. I am not any authority on that.
Q. Have you had an opportunity for observing them much with a view of ascertaining their values?
A. In several instances.
Q. How long have you lived in Key West?
A. Thirty years.
Q. Have you had much to do with vessels?
A. I have owned a portion of five.
Q. Have you bought and sold any?
A. Yes, sir.
Q. For about how many years have you bought and sold them?
A. For a period of twenty years.
Q. Were you a member of the firm of Cash & Curry?
A. Yes, sir.
Q. Did you recollect the sales of the fishing smacks captured as prizes during the Spanish-American war?
A. Yes, sir.
83 Q. Do you recollect about when that was?
A. In 1898.
Q. Do you know the vessels bought by that firm?
A. Yes; the "Poder de Dios" and the "Antonio y Paco."
Q. What were the prices paid for them?
A. For the "Poder de Dios," $1,010.00, and for the "Antonio y Paco," $1,910.00.
Q. Did you make an examination of these vessels at or near the time of purchases?
A. Yes, sir.
Q. What was their condition?
A. The "Poder de Dios" was in a fair condition, and the other one, "Antonio y Paco," was in a good condition also.
Q. Were any repairs to these two vessels made by your firm?
A. There were no repairs made that I remember of.
Q. Were they not put in good condition before they were sold?
A. They were put on the ways; cleaned and painted.
Q. Can you state about the cost of all these repairs?
A. No; unless I refer to the books of the store.
Q. Have you any idea?
A. No, sir.
Q. From your knowledge of the value of sailing vessels, what would you say was the value of these at the time you purchased them?
A. The "Poder de Dios," I suppose, was worth $2,800.00; and the "Antonio y Paco" was worth—according to the business conditions existing—she was worth not more than we paid for her. At that time we paid $1,910.00.
Q. What would you say was her full value?
A. She was worth about $4,000.00.
84 Q. Under the business conditions existing, what was her value?
A. What we paid for her.

Cross-examination:

Q. Does the firm of Cash & Curry still own these vessels, or are these vessels sold?

A. They are sold.

Q. When did they sell them?

A. A few months after the purchase of them.

Q. Why did they sell them?

A. On account of lack of employment for them.

Q. Why did you purchase these two vessels?

A. We purchased them—that is, under the impression that after the war was over that American vessels would be allowed to fish in Cuban ports, not having to pay duty on fish more than vessels of other nationalities.

Q. How much did you get for the "Antonio y Paco?"

A. $2,900.00.

Q. How much for the "Poder de Dios?"

A. $1,500.00.

Q. Did you ever buy and sell fishing smacks?

A. No, sir.

Redirect examination:

Q. Were the vessels in, small sailing vessels?

A. I traded in a small one—about fifteen tons—as far as I can remember; the other was sixty-four tons, and the other one owned was about one hundred seventeen tons.

85 I, the above-named, Beverly B. Whalton, do hereby certify that *I present* to the next notice issued and served in the above-mentooned cause, I was attended at my office of aforesaid by I. A. Zacharias, of counsel for the United States, and also by J. M. Phipps, of counsel for the several claimants herein, on the date herein stated; that the aforesaid named witnesses, who were of sound mind and lawful age, were by me first carefully examined and cautioned and duly sworn to testify to the truth, the whole truth, and nothing but the truth; and they thereupon testified as is before shown (the said depositions hereinabove set forth were by stipulation of counsel taken by a stenographer and by said stenographer transcribed, from the statements of the said witnesses; and the signatures of said witnesses to the said testimony were waived by the respective counsel to this cause as hereinbefore set forth); that the said testimony was taken at the place in the next notice specified, and at the time set forth; and that all that was so written and signed in the presence of said counsel for said United States and said claimants.

And I further certify the reason for taking said depositions was and is, and the fact was and is, that all the defendants live in the city of Key West, more than one hundred miles from the place where the said suit is to be tried; that I am neither of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause; that it being impracticable for me to deliver said deposition and exhibits thereto attached with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up with my own

hand and speedily and safely transmitted to the court *court* for which it was taken, and to remain under my seal until they have been opened.

As witness my hand and seal this 10th day of October, A. D. 1901.

[COURT SEAL.]

BEVERLY B. WHALTON,
County Judge, Monroe County, Florida.

86 In United States district court, southern district of Florida.

UNITED STATES
vs.
SCHR. "PAQUETE" AND 11 OTHER FISHING SMACKS.

In the matter of claims for restoration of value of vessels.

To Messrs. CONVERS & KIRLIN and J. M. PHIPPS, Esq., *Proctors and Counsel for Claimants.*

Please take notice that the United States will take the testimony of William H. Williams, Alfred Atchison, B. W. Johnson, Samuel Cates, W. D. Cash, W. B. Curry, John Lowe, jr., Milton Curry, Zacarias P. Gusman, and William Reading, and others, each and all of whom reside more than one hundred miles from the place of trial herein, for the final hearing, for use on behalf of the United States, before Beverly B. Whalton, esq., county judge of Monroe County, Florida, who is not of counsel nor interested in this cause, at the office of said Beverly B. Whalton, esq., in the city of Key West, Florida, on the seventh day of October, 1901, at ten o'clock a. m., and thereafter from day to day, as the taking of the deposition may be adjourned; and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States and the equity rules.

J. N. STRIPLING,
United States Attorney.

(Endorsed:) Filed Nov. 2, 1901. E. O. Locke, clerk.

87 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "LOLA" AND CARGO, SEVERO GONZALES, claimant on behalf of owners and crew. } Prize No. 15.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola" dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in

said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$5,000.00	
Cargo 100 kintals fish, @ $5	500.00	
		$5,500.00
Interest on do., @ 8% from date of capture Apr. 27th, 1898, to Nov. 2d, 1901		1,547.32
		$7,047.32
Less proceeds already returned claimant		425.16
		$6,622.16
And expenses of issuing commission and executing commission in Havana		21.75
Total		$6,643.91

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

88 In the district court of the United States, in and for southern district of Florida.

THE UNITED STATES
vs.
SCH. "LOLA" AND CARGO AND 11 OTHERS. } Prize.

To the Hon JAMES W. LOCKE, *Judge of said Court:*

Having been appointed by order of the court, at request of parties, to ascertain and report the amount of compensatory damages to be recovered by claimants herein, in accordance with the decree of this court of April 5th, 1900, and with the opinion and decree of the United States Supreme Court in the case of the United States vs. the "Lola," of January 29, 1900, I would respectfully report that July 28, 1900, after filing of interrogatories by counsel for claimants, and of objections and cross-interrogatories by the United States attorney on behalf of the United States, and McCammon & Hayden on behalf of the captors, commission was issued by me as clerk of said court to take testimony of witnesses for claimants in Havana. On September 3, 1900, said commissions were returned executed, and placed in public files in the clerk's office, and parties in interest informed thereof. On October 9, 1900, I notified counsel of parties in interest that I was ready to proceed with the matter, but counsel for complainants asked for further time.

On May 31, 1901, counsel for claimant asked to be heard to sum up these cases in last week in June, if convenient to the United States attorney and counsel for captors. Counsel for the United States and

captors being consulted by letter dated June 13, on June 17 counsel for captors replied that they could not be present in June, but would advise with the U. S. attorney. On July 26, 1901, counsel for claimants wired asking that time for hearing argument be set for July 17, 1901.

89 On June 30 counsel were notified that I would hear argument at any time between July 8 and 13th, but counsel for claimants replied under date of July 9th that he was unable to be present at that date.

On July 22nd I notified counsel interested that I would hear argument on August 6th, 1901. On August 6th there appeared before me J. Parker Kerlin, esq., counsel for claimant, and J. N. Stripling, esq., U. S. attorney.

The U. S. attorney objected to final argument being heard as the United States had not yet submitted evidence. It was agreed, however, that argument be heard on the claims as they stood, and the United States should have a reasonable time to take testimony in Key West and submit the same in time to close this matter up before a session of this court was held.

The testimony of John F. Horr was then taken by the United States before me, and the hearing adjourned.

On August 30, 1901, counsel were notified by me in writing, that on October 1st I should prepare my report on such testimony as might then be before me.

By letter of September 4th counsel for claimants asked that I do not report until he examine testimony taken by the United States.

On September 30th the U. S. attorney procured from me as clerk U. S. court, a subpoena for witnesses to appear before the county judge at Key West, Fla.

On October 13th testimony taken by the United States at Key West pursuant to notice and by consent of counsel, who were present and represented the respective parties, and the testimony so taken was duly submitted and considered.

From all the testimony taken and submitted and from that filed in court I have prepared and now submit my findings as follows:

I find due the claimants of the—

90 "Antonio Suarez"	$10,945.00
"Engracia"	7,218.08
"Oriente"	6,827.72
"Poder de Dios"	8,507.30
"Espana"	11,737.69
"Antonio y Paco"	10,003.30
"Fernandito"	7,471.94
"Paquete Habana"	5,687.06
"Quatro de Setiombre"	7,285.75
"Santiago Apostol"	11,632.74
"Lola"	6,643.91
"Severita"	9,566.49
	103,526.98

One hundred and three thousand five hundred and twenty six 98/100 dollars. I file herewith separate findings in each case, showing what is

allowed on account of the vessels, what on account of cargo, and how arrived at, and what for interest. I have also included the amounts paid by claimants to the U. S. court for issuing commissions, and to the commissioner appointed by this court for taking testimony in Havana.

The quantity of fish, cargo of said vessels, I ascertained from the "testimony in preparatorio" on file, and I allowed $5.00 per quintal as its value; the only testimony thereon being, that in April and May, 1898 same was worth in Havana, $10 per kintal, Spanish silver. The Spanish silver which has been realized upon by this court in prize matters, has proved to be worth 50 cents on the dollar, U. S. currency. Nothing was claimed or allowed for salt fish.

In determining the value of the vessels, I have discarded the testimony given by John F. Horr, as it did not appear from his testimony that he had knowledge, or claimed to have knowledge of the value of such vessels, or that he examined them with reference to ascertaining their value as "smacks," or had knowledge of their value in Havana, and he testified generally as to his "impressions," as to their condition and value in 1898.

Neither have I considered the prices which they brought at
91 auction in Key West, as a measure of their real value. The testimony taken in Key West by the United States shows that there was no demand for them, no use for them there, that purchasers bought them on "speculation," and finding there was no use for them sold them, at a profit, but for what they could get.

John Lowe bought the "Engracia" and sold her at a profit of $1,000.00 and the "Quatre de Setembre" at a profit of $1,050.00, yet says there was no use for smacks; that two he built in Key West cost each $10,000.00.

Wm. Reedy sold the "Antonio Saurez" at a profit of over $1,000, "because it was a dead loss to keep her," she was an idle expense;" still he says she was a better vessel than these built by John Lowe, which cost to build in Key West, $10,000 each.

A. Achieson bought the "Santiago Apostol" for $2,700 and sold her for $4,000 and thinks he did not get her real value, but as he had no use for her, sold her.

The testimony taken in Key West shows that all these vessels were in good condition, though they had been laying there idle some time, with the exception of a few trifling repairs. Neither were the witnesses whose testimony was taken in Key West, experts as to the values of smacks, with the exception of John Lowe and W. D. Cash; and they both testify that the value of such vessels in Key West at that time was only speculative.

The decree directs me to ascertain the amount that will compensate the owners in Havana, for the capture of their vessels and cargoes in April and May, 1898, and I fail to find any testimony on that which is the only issue, excepting testimony which was taken in Havana.

In the "Lively" and cargo, 1 Gallison, 29, the principle as to damages for wrongful capture is said to be "equal to the real injury sustained."

In the "Amiable Nancy" 3 Wheaton, R. 546, measure of damages for loss of vessel by trespass is the "full value of the property." I
92 consider this is what the Supreme Court intended by their judgment, to be ascertained.

In the "Ironmaster," Swabey, 443 (Pritchard's Ad. Vol. 2, 1745), best evidence of value of a vessel is said to be the "opinion of competent persons who knew her shortly previous to her loss;" and further, the "owner's affidavit of prime cost, unsupported by documentary proof is not sufficient."

From this one can conclude that if such affidavit be supported by documentary proof it will be sufficient.

The testimony taken in Havana consists of the sworn statement of the owners or agents of the vessels as to their cost, the expenditures for repairs (rebuilding in some instances), in some cases legal documents, mortgages, &c., showing sums paid; extracts from books kept by the owners, and in every case the testimony of an official whose duty it was to appraise and register each vessel in the port, and a certified copy of his official appraisal and registry, made in March, 1898, taken from the records. Such evidence, positive in character, and of a nature recognized by the law as being the best possible, can not be controverted by the impressions and estimates and guesses of witnesses who can not qualify as experts on values of such vessels, and only pretend to speak as to value in another port, in another country, and where there was no use for such property.

I therefore accept the testimony taken in Havana as establishing the value of the vessels and of the fish to the claimants at the dates of capture.

I allow 8% interest on such values from the date of capture up to the filing of this report, deducting the portion of proceeds returned to claimants. When the amount so returned exceeded the interest then due I made the computation according to the U. S. rule for partial payments.

I do not consider that the amounts as found fully "compensate" the claimants. I know officially that they have been to expense for proc-
tor's fees, copies, printing of records, defending the libels for
93 prize, and prosecuting their claims, but whether or not such items come within the scope of my appointment, no testimony has been submitted to me in relation to them, and I therefore only refer to them to emphasize the fact that they are not included in this report.

I file herewith the testimony taken, separate reports as to each case, and correspondence and notices (or copies of same) as to the proceedings in connection herewith.

Respectfully,

E. O. LOCKE, *U. S. Commissioner.*

Nov. 2nd, 1901.

United States district court, southern district of Florida.

UNITED STATES }
vs. } Prize No. .
SCHR. "LOLA." }

To E. O. Locke, United States commissioner, specially appointed to take testimony and report.

For services in taking testimony, sending notices, hearing argument, and computing amounts, and reporting compensatory damages $25.00

(Endorsed:) U. S. vs. Sch. "Lola." Report of commissioner. Filed Nov. 2, 1901. E. O. Locke, clerk.

94 In the district court of the United States in and for the southern district of Florida.

THE UNITED STATES
vs.
SCHR. "LOLA" AND CARGO, AND ELEVEN OTHERS. } Prize.

Now comes the United States, and objects and excepts to the report of the commissioner filed herein, upon the following grounds:

1st. That the amount allowed as compensatory damages for the following vessels and each of them is excessive, and not sustained by the evidence.

"Antonio Suarez"	$10,945.00
"Engracia"	7,218.08
"Oriente"	6,827.72
"Poder de Dios"	8,507.30
"Espana"	11,737.69
"Antonio y Paco"	10,003.30
"Fernandito"	7,471.94
"Paquete Habana"	5,687.06
"Quatro de Setiembre"	7,385.75
"Santiago Apostol"	11,632.74
"Lola"	6,643.91
"Severita"	9,566.49

2nd. That the value of each of said vessels, to wit, "Antonio Suarez," "Engracia," "Oriente," "Poder de Dios," "Espana," "Antonio y Paco," "Fernandito," "Paquete Habana," "Quatro de Setiembre," "Santiago Apostol," "Lola," and "Severita," as ascertained by the commissioner, is contrary to the evidence.

95 3rd. That the commissioner erred in disregarding the testimony of the witness John F. Horr for the United States.

4th. The commissioner erred in not hearing and sustaining the objections of the United States, the captors, to the interrogatories propounded to the several witnesses examined under commission in Havana, Cuba, to wit:

Jose Pazos, Juan Lluria y Pujadas, Francisco Gandon, Antonio Suarez, Seguendo Casteleiro, Cesar de la Torre, Severo Gonzalez, Domingo Trocha, Francisco Vilar, Francisco Gonzalez, Manuel Carillo, Jose Bengoches, Santiago Deus.

5th. The commissioner by his report appears to have disregarded wholly the testimony taken before B. B. Walton, commissioner at Key West, Florida, of the several witnesses for the United States, to wit:

Samuel Cates, William D. Cash, Milton Curry, John Lowe, Alfred Atchison, William Reedy, William B. Curry.

96 6th. The commissioner erred in limiting his consideration of the value of said vessels to the testimony as to the cost and alleged market values in Havana, Cuba, only.

J. N. STRIPLING,
U. S. Attorney.

(Endorsed:) In United States district court, southern district of Florida. The United States vs. schr. "Lola," and cargo and eleven

others. Exceptions to commissioner's report. Filed this 5th day of Nov., 1901. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. J. N. Stripling, U. S. attorney.

97 In the district court of the United States, in and for the southern district of Florida.

THE UNITED STATES
vs.
Schr. "LOLA" AND CARGO, SEVERO GONZALES, claimant. } Prize No. 15.

This cause coming on to be heard upon the mandate of the Supreme Court, and the report of the special commissioner herein, appointed by consent of parties, the testimony accompanying the same, and the exceptions thereto, and having been fully heard by argument, and duly considered, it is hereby ordered that the exceptions to said commissioner's report be overruled; and it is found that the compensatory damage due claimant under said mandate of the Supreme Court, with interest to date of such commissioner's report, is $6,643.91.

And it is further ordered, adjudged, and decreed, that the claimant, Severo Gonzales, claimant on behalf of owners and crew, have received and recover from the United States, the libellant, the said amount of $6,643.91, together with interest from the 2nd day of November, 1901, the date of said commissioner's report, and twenty-five dollars costs to said commissioner, which is hereby taxed and allowed.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., February 8th, 1902.

(Endorsed:) U. S. district court, southern district of Florida. The United States vs. schr. "Lola," &c., and , claimant. Decree for claimant. Filed Feb. 8th, 1902. E. O. Locke, clerk.

98 In United States district court, southern district of Florida.

UNITED STATES
vs.
SCHOONER "LOLA" AND CARGO, AND ELEVEN OTHERS.

These several causes coming on to be heard, on application of the United States for time within which to consider the advisability of an appeal:

It is ordered that sixty days from this date be allowed to the United States and to the captors within which to take an appeal from the decree of February 8th, 1902, determining the amount awarding compensatory damages to the claimants herein.

Done and ordered at Jacksonville, Florida, this third day of March, A. D. 1902.

JAMES W. LOCKE, *Judge.*

(Endorsed:) In U. S. district court, so. dist. of Fla. United States vs. schooner "Lola," and eleven others. Order allowing time in which to perfect an appeal. Filed Mar. 3, 1902. E. O. Locke, clerk.

99 United States district court, southern district of Florida.

THE UNITED STATES
against
THE SPANISH SCHOONER "LOLA,"
Tomas Betancourt, claimant.
} In prize.

SOUTHERN DISTRICT OF NEW YORK,
State and County of New York, ss:

J. Parker Kirlin, being duly sworn, deposes and says: I am a member of the firm of Convers & Kirlin, proctors for the claimant herein, and as such have had knowledge and control of the conduct of this case. My firm was employed as proctors by the master of the said "Lola," acting for the then owner thereof at Key West, Florida, in May, 1898, when the said vessel was in that port, and libeled in this court as prize of war at the instance of the United States. As such proctors, my firm moved this court to open the decree of condemnation and sale, which had been entered herein on or about May 23, 1898, and to file a claim in said action on behalf of the said owners, in the name of the master of the said vessel, which motion was duly granted on or about May 28, 1898. Pursuant thereto, my firm duly filed a claim to the said vessel on behalf of the said owner, in the name of the master, Tomas Betancourt, as master and lawful bailee thereof. On or about May 30, 1898, a final decree of condemnation and sale in the above-entitled action was entered and the vessel was sold as prize of war.

100 Under a stipulation dated September 26, 1899, between the counsel for the United States and my firm as counsel for the claimant, it was agreed that this case should abide the event of the appeal taken by the claimant in case of the United States against the "Lola," and that the appeal in the said last-named case should determine the right of the United States to the proceeds of the vessel in the present case.

The said case of the United States against the "Lola" came on to be heard in the Supreme Court of the United States, and the said court issued its mandate to the United States district court for the southern district of Florida, ordering that the decree of the said court be reversed and that the proceeds of the sale of the vessel, together with the proceeds of any sale of its cargo, be restored to the claimant, with damages and costs.

Pursuant to such mandate and to the stipulation hereinbefore referred to, an interlocutory decree was entered herein, upon the consent of the counsel for the United States and of the counsel for the captors of the said vessel, by the terms of which it was ordered that the final decree entered herein, on or about May 30, 1898, be vacated and set aside, and that the libel be dismissed, and that the proceeds of the sale of the said vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and costs, and the question whether the amount of such damages, when determined, should be charged against the United States, or the naval captors, or apportioned between the United States and the naval captors, was reserved for further consideration on the coming in of the report of the commissioner appointed to determine the amount of such damages, and it was referred to

Eugene O. Locke, esq., as special commissioner, to determine the amount thereof.

101 Further proceedings in accordance with such interlocutory decree were had, and on or about February 8, 1902, a final decree was entered in favor of the claimant herein.

This application is made to vacate and set aside the said decree and to amend the proceedings herein, in certain particulars, on the following grounds:

1. The said master, who appears as the claimant of record herein, acted in employing my firm for and on behalf of the person who was the owner of the said vessel at the time of the seizure thereof and the filing of the libel herein, and is described as so acting in the claim and test affidavit filed herein, and the said person is the real party in interest herein.

The owner of the said vessel at the time of the seizure of the vessel and the filing of the libel herein was Severo Gonzalez, as appears from the claim and test affidavit filed herein, and from the testimony taken under the interlocutory decree hereinbefore referred to. The reason why the said party was not made the actual claimant of record in the said case was because he was not within the United States at the time the said claim was filed, but was then in the island of Cuba, as I am informed and believe. The said party who was then the owner of the said vessel is the real party in interest, and they now desire to be substituted in place of the said master as claimant of record.

Power of attorney from the said party who was the owner of the said vessel at the time of her seizure and the filing of the libel herein and who is the true party in interest herein, to conduct the said case and to receive payment of any and all sums found and decreed to be due herein

102 from the United States, is filed in this court and application is now made to have the said decree entered herein on or about February 8, 1902, vacated and set aside, so that the name of the said party, instead of the name of the said master, may be substituted as the claimant in any decree to be entered herein, and that the name of the said party may be substituted for the name of the said master as claimant of the said vessel in all the papers and proceedings had herein.

2. The said commissioner, Eugene O. Locke, duly reported his findings, and on exception to his report argument was had and the said report was confirmed. No further proceedings have been had subsequent to the aforesaid report upon the question of the responsibility for or apportionment of the said damages, as provided in the said interlocutory decree hereinbefore referred to, and application is further made to reopen the said decree entered herein on or about February 8, 1902, for the purpose of taking such further proceedings as have been provided for by agreement in the said interlocutory decree, and as may be right and proper before the entry of a final decree herein.

J. PARKER KIRLIN.

Sworn to before me this 9th day of May, 1902.

[NOTARIAL SEAL.] JAMES G. KILBRETH,
Notary Public, New York County.

(Endorsed:) United States district court, southern district of Florida. The United States against the Spanish schooner "Lola," Tomas Betan-

court, claimant. Affidavit of J. Parker Kirlin. Filed this 12th day of May, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Convers & Kirlin, proctors for claimants.

103 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville on the 19 day of May, 1902, present honorable James W. Locke, district judge.

THE UNITED STATES
against
THE SPANISH SCHOONER "LOLA," TOMAS BETANCOURT, claimant. } In prize.

On reading and filing the affidavit of J. Parker Kirlin, verified May 9, 1902, and on all the papers and proceedings had herein,

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the United States attorney, it is hereby

Ordered, I. That the final decree heretofore made herein, on or about February 8, 1902, be vacated and set aside.

II. That the report of the special commissioner appointed to assess and determine the amount of the claimant's damages herein, be, and the same hereby is, confirmed, with twenty-five dollars costs hereby taxed and allowed, to be paid to the said commissioner.

III. That the name of Severo Gonzalez be substituted for the name of Tomas Betancourt as claimant of the said vessel in all the papers and proceedings had herein.

104 IV. That leave is reserved to the claimants to enter a new decree for the amount of their damages and costs, as aforesaid, after a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, the determination of this question being reserved for further proceedings.

JAMES W. LOCKE, *Judge.*

(Endorsed:) United States district court, southern district of Florida. The United States against the Spanish schooner "Lola," Tomas Betancourt, claimant. Order vacating final decree. Filed this 19th day of May, 1902. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Convers & Kirlin, proctors for claimants.

105 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, a further hearing will be had herein before the honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree entered herein on or about April 5, 1900, and that at the time and place stated a proposed

final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.

J. N. STRIPLING, esq.,
U. S. Attorney for the Southern District of Florida.

To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed:) United States district court, southern district of Florida. The United States against the "Lola." Notice of further hearing, final decree, and notice of settlement. Filed Jun' 16, 1902. E. O. Locke, clerk. Service of a copy of the within notice of further hearing, and of the within proposed final decree, and notice of settlement thereof is admitted this ninth day of June, 1902. H. M. Hoyt, Asst. Atty. Genl. U. S.

106 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902. Present, honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE SPANISH SCHOONER "LOLA," SEVERO Gonzalez, claimant.

An interlocutory decree having been entered, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimant herein at the sum of $6,643.91, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United
107 States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimant in addition to the damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having

been substituted in place of her master, as claimant of the vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to:

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimant, Severo Gonzalez, have, receive, and recover from the United States, the lebelant herein, the sum of $\$6{,}643.\frac{21}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Lola" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $\$327.\frac{64}{100}$, making in all the sum of $\$6{,}996.\frac{55}{100}$ with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

108 United States district court, southern district of Florida.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "LOLA," SEVERO GONZALEZ, claimant, appellee.
} Assignment of error.

The United States assign error to the final decision and decree of the United States district court, in the southern district of Florida, herein, as follows:

First. The court erred in sustaining the report of the commissioner as to the amount of damages sustained by the claimant.

Second. The court erred in overruling the exceptions filed by the complainant to the report of the commissioner.

Third. The damages awarded to the claimant are excessive and exorbitant.

Fourth. The court erred in overruling the motion of the complainant to have the damages awarded against the captors.

Fifth. The court erred in awarding damages herein against the United States.

J. N. STRIPLING,
United States Attorney.

(Endorsed:) U. S. district court, southern district of Florida. Vs. Fishing smack "Lola," Severo Gonzalez, claimant, appellee. Order allowing appeal and assignment of errors. Filed June 24th, 1902. E. O. Locke, clerk.

109 United States district court southern district of Florida.

THE UNITED STATES, APPELLANT,
vs.
THE FISHING SMACK "LOLA," SEVERO GONZALEZ, claimant, appellee. } Prize.

Now comes the United States, appellant, considering itself aggrieved by the final decision and decree herein, and alleging error in the said decree, appeals therefrom to the Supreme Court of the *of the* United States. It presents herewith an assignment of errors complained of, and thereupon prays that the said appeal may be allowed, and that the record and all proceedings herein may be duly certified to the Supreme Court of the United States, in accordance with the rules and practices in such cases made and provided, and to the end that the said appeal may be heard and determined by the said court.

J. N. STRIPLING,
United States Attorney.

June 24th, 1902.

Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors on appeal, it is:

Ordered that the appeal of the United States be, and the same is hereby allowed.

(In open court.)

JAMES W. LOCKE,
United States Judge.

June 24th, 1902.

110 District court of the United States, southern district of Florida.

THE UNITED STATES
vs.
THE "LOLA" AND CARGO. } Prize.

I, Eugene O. Locke, clerk of the district court of the United States in and for the southern district of Florida, hereby certify that the foregoing pages, numbered from one to one hundred and nine, inclusive, is a true copy of the record, assignments of errors, and proceedings in said court in the above-entitled cause.

In testimony whereof I hereunto set my hand and affix the seal of said court at Jacksonville, in said district, this eighteenth day of September, A. D. 1902.

[SEAL.] EUGENE O. LOCKE.

111 (Indorsement on cover): Office Supreme Court of U. S. Received Oct. 4, 1902. File No. 18,807. S. Florida D. C. U. S. Term No. 579. The United States, appellant, vs. The Spanish schooner "Lola," Severo Gonzalez, claimant, filed January 31st, 1903.

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Office Supreme Court U. S.
FILED
FEB 2 1903
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SMACK "PAQUETE HABANA," JUAN PASOS, claimant. } No. 578.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SCHOONER "LOLA," TOMAS BETANCOURT, claimant. } No. 579.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

MOTION TO ADVANCE.

36345

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SMACK "PAQUETE HABANA," Juan Pasos, claimant. } No. 578.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SCHOONER "LOLA," TOMAS Betancourt, claimant. } No. 579.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

MOTION TO ADVANCE.

These cases in prize, representative of the group known as the Fishing Smack Cases, have already been before the court on the question of condemnation (175 U. S., 677). The decree of this court restored to the claimant, with compensatory damages and costs, the proceeds of the sale of the vessels. After further proceedings below under said decree, the cases are now again before the court upon appeal by the United States.

17410—03

Two questions are presented, namely, whether the *quantum* of damages allowed is excessive, and whether the United States or the naval captors are liable.

The other cases in the group, presenting the same questions on substantially the same record, with differences merely as to the ownership, value, etc., of the particular vessel, will necessarily abide the result in the two cases selected for argument, although no stipulation to this effect has been made.

I submit a motion to advance for hearing at this term or early next term, in which counsel for the claimants concurs, for the following reasons:

The questions are not only of private right, but are public and international in their nature. They affect, on the one hand, citizens of another nation, who, for that reason, and because of their calling, are to be regarded under the previous judgment of this court as entitled to especial consideration, which may be shown by prompt determination of their claims. The questions involve, on the other hand, the principle of prize law that not the capturing government, but the naval captors individually, are responsible in damages when a seizure has been made without probable cause and damages have been allowed. This liability, cast by the law, as the Government will contend, upon meritorious officers whose error was due to ignorance and not malice, should also be promptly determined in order to apprise them with as little delay as possible of the sums with which they are severally chargeable; or, on the other hand, to relieve them seasonably from

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doubt and the burden of the liability if the court shall be of opinion that the Government itself is liable.

For these reasons I respectfully submit that the motion should be granted, subject to the convenience of the court.

JOHN K. RICHARDS,
Solicitor-General.

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FILE COPY.

Office Supreme Court U. S.
FILED
MAR 16 1903
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SMACK "PAQUETE HABANA," Justa Galban et al., claimants. } No. 578.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SCHOONER "LOLA," SEVERO Gonzalez, claimant. } No. 579.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SMACK "PAQUETE HABANA," Justa Galban et al., claimants. } No. 578.

THE UNITED STATES, APPELLANT,
v.
THE SPANISH SCHOONER "LOLA," SEVERO Gonzalez, claimant. } No. 579.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

These cases have returned to the court (175 U. S., 677) upon appeal by the United States from decrees below under the proceedings had in obedience to the order of this court that the proceeds of the sale of vessel and cargo should be restored with damages and costs, the damages to be compensatory only and not punitive. At the outset, then, although the capture was technically unlawful and without probable cause,

the idea of vindictive damages as for a gross marine trespass is eliminated.

It will be recalled (pp. 678–679 of said opinion) "that the *Paquete Habana* was a sloop 43 feet long on the keel and of 25 tons burden, and had a crew of three Cubans, including the master," and that she had a cargo of about 40 quintals of live fish when she was captured; that "the *Lola* was a schooner 51 feet long on the keel and of 35 tons burden, and had a crew of six Cubans, including the master," and that she carried a cargo of about 10,000 pounds of live fish when captured; that the *Paquete* was sold after the decree of condemnation below for $490 and the *Lola* for $800, there being no other evidence in the original record (on condemnation) of the value of either vessel or of her cargo.

Under the remand by this court the cause was referred to a commissioner to ascertain and report the amount of compensatory damages to be recovered by claimant, and testimony was taken on behalf of the claimants and the United States. The following is an abstract of the evidence as to the *Paquete* (Rec., pp. 27–35, 49–50):

Jose Pazos, commanding the smack *Antonio Castelerio* at the time of the capture of the *Paquete*, states that he, with his two brothers, owned a half interest in the *Paquete;* had known her for eighteen or twenty years; the vessel was valued at the time of her capture at $4,500 Spanish gold; her cost price (one-half interest) was $2,400; she earned about $75 per month;

was always engaged in the fishing business; the owners received one-third, with a certain allowance, and the seamen two-thirds of the earnings; no books were kept with reference to the business of the vessel (pp 27–28).

Juan Lluria y Pujadas, shipwright and harbor master at Havana, states that he inspected and valued the *Paquete Habana* to be worth on March 1, 1898, $4,500, basing his estimate upon the special conditions of the vessel and his constant inspection and appraisement of numbers of such vessels (p. 29).

Francisco Gandon and Antonio Suarez, engaged in the fishing business at Havana, state that during the months of April and May, 1898, fresh fish were sold in Havana at $10 (Spanish silver—worth 50 cents on the dollar) per quintal; before the blockade fresh fish brought $7 per quintal (pp. 30–31).

On behalf of the Government, John F. Horr, United States marshal, states that the *Paquete Habana* was a small sloop smack; she was sold for $490; considering her age and size, $1,500 would be a fair valuation; the value given refers to value at Key West.

Alfred Atchison, deputy marshal during the early part of 1898, states that he had the fishing smacks in his custody, and made an examination of their condition; they were in generally good condition; the vessels were all sold back to the people in Havana.

The testimony in the case of the *Lola* is to the same effect (pp. 22–26, 31–32, 39), and proceeds upon the same basis as to the amount of loss on the part of

claimants, and as to reduction of the claim on the part of the United States.

The commissioner's report in general, and his particular findings as to the *Paquete*, placed the damages at $5,687.06, made up of the following items (p. 58):

Value of vessel		$4,500.00
Interest on same at 8 per cent from date of capture, April 25, 1898, to November 2, 1901		1,287.00
		5,787.00
Less proceeds returned claimant		121.69
		5,665.31
And expenses of issuing and executing commission		21.75
Total		5,687.06

The cargo of fish was omitted, probably from inadvertence.

The commissioner accepted the testimony taken in Havana as establishing the value of the vessels and of the fish to the claimants at the dates of capture. (Rec., p. 57.)

In the case of the *Lola*, upon the same course of reasoning, the commissioner reported the damages at $6,643.91 (p. 50).

The district court overruled exceptions to the commissioner's report and findings, and confirmed his award, adding costs and interest (*Paquete*, p. 65; *Lola*, p. 55), and, the question of law as to whether the naval captors or the United States were responsible having been duly raised and argued, decided by final decree that the claimants recover of the United States; that is, the judgment runs against the Government

Whereupon the United States appealed, and under the assignments of error (*Paquete Habana*, p. 66; *Lola*, p. 60) brings the two questions of the *quantum* of damages and responsibility therefor before this court.

ANALYSIS OF EVIDENCE IN DETAIL AND COMMENTS THEREON.

The *Paquete* was seized April 25, 1898, by the U. S. S. *Castine*, Commander Robert Berry, U. S. Navy, commanding. (Rec., p. 1.) She was of 25 tons burden, and carried a cargo of 40 quintals of fish at the time of capture, according to the testimony in preparatorio of Pazos, the master (pp. 9, 10). He also states that none of the officers or crew had any interest in the vessel, but that the interest of the crew in the cargo was two-thirds, and of the owner one-third. The boat had been called the *Restless* at one time (id.). She is of sloop rig and has one mast. (Master's test affidavit, p. 13.) On the other hand, his brother testifies (pp. 27, 28) that the master, another brother, and himself owned a half interest in the vessel, the other half being owned by Dona Galban; that the *Paquete* was American built, and according to his recollection was of 36 tons burden, net; that the average take of fish on her trips was 30 quintals, but he does not remember the exact amount on any particular trip, nor the amounts realized from the sale of the cargoes. The testimony of this witness is that the value of the vessel at the time of capture was $4,500 Spanish gold, based upon the cost price of the half interest which he and his brothers had bought ($2,400) with the addition of certain repairs; that vessels of this class ordinarily earned 18 to 20 per cent

net, and this particular vessel about $75 profit per month, his basis of information being accounts kept by commission merchants who handled the catch. This witness had known the vessel for eighteen or twenty years, and purchased his interest in her about 1892. The said commission merchants paid for the fish at the rate of $10, Spanish silver, per quintal, which was divided among the owners and crew according to their respective interests. No books or accounts were kept by the parties in interest as to the vessel's business (pp. 27–28).

The harbor master at Havana (p. 29) confirmed this appraisement of value of the vessel, and referred to his certificate of inspection and appraisement. This is a special document given for the purposes of this case in November, 1898, at the instance of parties in the claimant's interest, and does not refer to antecedent records kept by the harbor master; he kept no records. The certificate values the *Paquete* at $4,500 Spanish gold, and describes her as of 28 tons burden. This is a third variation as to tonnage in claimant's testimony, and, taken in connection with all the circumstances, suggests not unfairly that the certificate may experiment with the harbor master's recollection, and perhaps contain some guesswork (pp. 29–30).

The testimony as to the cargo shows that before the blockade fresh fish were worth $7 Spanish silver per quintal, and rose to $10 during the blockade. The figures given were the highest market rates, "as the prices of all kinds of provisions gradually rose at that period" (pp. 30–31).

The testimony for the United States shows that Horr, the marshal (pp. 32 et seq.), having lived about thirty years at Key West had built and partly owned six small sailing vessels; that while he had no special knowledge of the value of fishing smacks, he states that there is no material difference between them and ordinary small vessels of like character, except the well for the fish, which would add a little to the cost of construction. He knows of a contract which was let at $90 per ton for building a wooden vessel of this same general type (p. 34). In response to the question (p. 35) whether the claimant's valuation for the *Paquete* was not excessive, and if so, what would be a fair valuation, he testified as follows:

> The *Paquete* was a small sloop smack. I do not recollect about her age; I knew about her age at that time, but don't recall now. She sold for $490. Considering her age and size, I would think $1,500 would be a fair valuation for her.

It is evident that some of these vessels and other such vessels were built or formerly owned in Key West, and were then sold in the Havana market (p. 37; see also testimony of Milton Curry, p. 45, and of Lowe, p. 47). Many or all of the smacks were ultimately sold in Havana or to parties residing there, and presumably to claimants (Horr, p. 37; see also Lowe, p. 47; Atchison, pp. 49, 50). Cates (p. 40) says as to the *España* that he offered to sell her to the owners for $3,500, and they would not give that much money, and that (p. 42) he ultimately sold her to her former

owner for $2,500. The expression in Atchison's testimony (p. 50) is that these vessels "were sold back to *the people* in Havana."

It is evident from Horr's testimony (p. 37), while he is cautious about the difference between values at Key West and Havana, that as a matter of fact these fishing smacks originally came from Key West, and that Cuban purchasers customarily came over to Key West to buy such vessels at the rates prevailing in the latter port. The difference in the construction between ordinary boats and fishing smacks of such tonnage does not seem to him to involve a great difference in the cost, and he is evidently speaking from knowledge and experience (p. 38). The certain decrease in the value of fishing smacks plying from Key West for the Cuban trade, because of the change a short time previous in the Spanish tariff on fish, or other port restrictions in Cuba on importations, manifestly should not be permitted to have undue weight upon the question of value. In general, the Havana market for such boats was relatively better and the Key West market relatively worse than formerly. This point can add nothing material to the simple fact that when these boats were sold, conditions at Key West were not specially favorable. The resales, however, to the former owners and claimants here, or to other parties in Havana, are a far more significant test of the real value at Havana, and invariably fall far below the figures allowed by the commissioner and the court. It is evident, too, from Horr's testimony and from other evidence, that most of these boats were old. The suggestion that the

smacks, built or formerly owned in the United States, had been repaired and overhauled in Cuba, and that Horr's opinion was expressed without exact knowledge of the boats' history in this respect, can not weaken the general purport of his testimony given from acquaintance with these particular vessels and from his rather wide knowledge and experience. Indeed, the drift of the cross-examination on this point (*Paquete* record, pp. 38–39) is difficult to follow. The marshal was testifying as to the value of the boats at the time of seizure and sale. He shows that the vessels were old American built and owned boats, sold in Havana and renamed He had seen and examined them at the time of the Government sale. What had been done to them in the way of rebuilding or repairing, either before the sale or after they had been resold to their former owners or other parties in Havana, has no bearing whatever on the question of value here—the crucial question of value at the time of capture.

It may be noted (*Paquete*, p. 39) that there was no sale or return of the cargoes of fish, there being no market for them at Key West, so they were distributed among the crews of the smacks, or of revenue cutters, or died and were thrown away.

The witness Cates (p. 40) is familiar with the selling of vessels in the Key West market and their values, having traded in them for years. He shows that the auction sale brought together many people, and that there was considerable bidding and competition. Cash also (p. 43) qualifies as a witness on the subject because of his business experience at Key

West; so also Curry (pp. 44, 45) and Lowe (p. 46). Atchison's occupation as a seaman (p. 48) has made him familiar with the value of sailing vessels. These men have traded in vessels of this same general type for years. W. B. Curry (p. 52), although he does not consider himself an authority on the value of sailing vessels, has lived for 30 years at Key West, has owned a portion of five vessels, and has bought and sold such vessels.

The *Lola* was seized April 27, 1898, by the U. S. S. *Dolphin*, commanded by H. W. Lyon, commander, U. S. Navy. (Rec., p. 1.) The testimony in *preparatorio* (p. 9) shows that she is of about 55 tons burden, and that the usual arrangement obtained as to the interest of her master and crew in the catch, being in the proportion of one-third and two-thirds. The master had owned the vessel for fifteen years; does not know where she was built; she formerly went under a different name; she carried 10,000 pounds of fish. In his test affidavit the master says that the vessel's actual length is about 51 feet, and her tonnage about 35 tons. She is of schooner rig and has two masts (p. 13). The owner (p. 22) bases his valuation of $5,000 on the fact that he had made considerable repairs and improvements after he had purchased the boat in 1887, and his claim is that her earnings were 20 to 22 per cent per annum. It does not appear whether this was gross or net. He gives the items of deduction from the cargo's distributive value, as between owner and crew, in the nature of an allowance to the vessel for

expenses. He does not remember how much he paid for the vessel, but believes he obtained it at a cheap price. He made expensive repairs, resulting in an appraisement at $5,000. As in the *Paquete* case, no books were kept of the business of the vessel, but supposedly the particulars will be found in the books and accounts of the factors or commission merchants. There was a settlement after each trip (pp. 22–23). The certificate of the harbor master (p. 24) gives the tonnage at 35 tons and the appraisement at $5,000 Spanish gold.

Horr testifies as follows as to the sale of the *Lola* (Rec., p. 31):

> Q. You sold the *Lola*, did you?
>
> A. Yes, sir.
>
> Q. How much did she bring?
>
> A. Eight hundred dollars.
>
> Q. She is valued by the present claimants at $5,000. State whether or not you consider that a fair valuation.
>
> A. No, sir; I consider it excessive in the United States—in Florida and Key West—because I know that such a vessel could be built for considerably less money.

I observe that there is some confusion as to the *Lola* and *Engracia*, the phrase "*Lola Engracia*" being used by some witnesses to describe either vessel. But inasmuch as the *Lola* sold for $800 and the *Engracia* for $1,000, the identity can be traced and confusion avoided. Thus, Milton Curry, referring to the *Lola* (p. 39), says that she and the *Severita* were owned in

Key West a number of years before, and that the estimate of value upon which he purchased was based on information received from the crews of the smacks and from parties in his employ who were familiar with the vessels. He considered the prices he paid fair for his speculative purposes. He resold the *Lola* for $1,800, after putting repairs on her of value $50 to $100.

This is a proper place to say, for application to all of these vessels, that while it can not fairly be insisted that the prices at which they were sold at the Government sale can be taken as conclusive on value, the prices at which they were resold, as the record shows, to parties in Havana in some cases, and very likely in all cases to the claimants themselves, are a reasonable and normal test of the capital values of the various vessels.

It is evident that here we have claims inflated to an unreasonable degree, and an acceptance of the highest figures claimed, by the commissioner and the court, without careful scrutiny and almost as matter of course. The estimates or appraisements by or on behalf of owners, whose interest is the most patent thing in the record, is taken unchallenged and as established; and the halt called by the Government testimony is brushed aside as guesswork or as proceeding from unqualified witnesses. It is natural to suppose that claimants invoking under the decision of this court on condemnation the merit of poverty and hardship (not altogether deserved as the firm or corporate character

of ownership or its capitalistic implications are traced) find their neighbors, business connections, and national officials quick to aid them and to turn vague recollections not based on records into formal certificates. It is well to remember what Dr. Lushington said in *The Soglasie* (Spinks Prize cases, 104), cited in *The Benito Estenger*, 176 U. S., 568, 580:

> With regard to documents of a formal nature, though when well authenticated they are to be duly appreciated, it does not follow that they are always of the greatest weight, because we know, without attributing blame to the authorities under which they issue, they are instruments often procured with extrordinary facility. What the court especially desires is that testimony which bears less the appearance of formality—evidence natural to the transaction, but which often carries with it a proof of its own genuineness. The court looks for that correspondence and other evidence which naturally attends the transaction, accompanies it, or follows it, and which, when it bears upon the face of it the aspect of sincerity, will always receive its due weight.

See also *The Vigilantia*, 1 C. Rob., 1, 7.

It is insisted, on the other hand, that the Government witnesses who were without interest and had been familiar for years with the conditions of the active Key West market for vessels of this type, being only 85 miles from Havana (*Lola*, Rec., p. 30), are entitled to belief in their substantial consensus of opinion that the

claims were inflated, and are to be regarded as giving the sober evidence of shrewd and qualified men. It is always to be remembered that in general these boats were resold in Havana at figures in advance of the purchase prices at the Government sale, but far below the amounts claimed. There is good reason apparent in the record for believing that in some if not all instances the former owners, the claimants themselves, bought the vessels at these figures much below their claims. There is another point showing that the Key West testimony is informed and significant, and this is found in the fact that many of these boats were Key West built and were known to the witnesses. It is also to be noted that as a rule they were old, although in fair condition for old boats; but they were not only second-hand vessels, but second-hand vessels which had been known in those waters under different names for fifteen or twenty years or more. The American buyers at the Government sale had expended various sums in moderate repairs, in painting, cleaning, etc., which amounts when they clearly appear are certainly to be deducted from the estimates of value theretofore.

Further, when the proximity of Key West to Havana is considered, and the direct and derived interest of the claimants' witnesses, together with the general upward impulse of values at Havana during blockade, extending not only to food supplies, but to all instruments of their collection, are kept in view, it seems to me preposterous to grant in this wholesale way the

prime cost of brand-new vessels (or more) to these instruments or agencies of enemy commerce and supply, which were thus enhanced in value by our own siege; and this point is accentuated when we regard the cargoes, as to which the admitted highest value due to our blockade operations is allowed. If we take the price of fresh fish at Havana before the blockade (*Lola*, p. 25; *Paquete*, p. 31)—and under a fair presumption *just* before the blockade, that is, *imminente bello*—at $7 Spanish silver per quintal, and make the fair allowance of $1 for the degree of advance due to the war then reached, we shall find that $6 Spanish, or $3 American, is a fair allowance for the fish, as against the full rate of $10 Spanish, or $5 American, allowed by the commissioner and the court.

The rate of interest on such allowances has surely fallen in the last half century, and is not to be computed as of forty or fifty years ago, nor at the Florida legal rate of this day; and it is a reasonable and fair assumption that the normal rate in an established Spanish city of the consequence of Havana, a well-known money market in touch with all the great financial centers, would not exceed 6 per cent.

Applying these ideas and adjustments to the cases in hand, we find for the *Paquete* as follows:

In place of the commissioner's statement at page 58 of the record, as readjusted and increased by the court's final decree (p. 65), we submit the following statement

as a fair and reasonable basis for the reformation of the decree herein:

THE "PAQUETE HABANA."

[Of sloop rig, one mast, 28 tons burden, at least 20 years old, sold at the Government sale for $490. (Rec., pp. 13, 28, 30, 35.)]

Capital value		$2,000.00
(Horr testifies, page 35, *Paquete* Rec., that $1,500 would be a fair valuation; the addition of $500—33⅓ per cent—brings her up to a liberal figure in view of all the circumstances shown.)		
Cargo, 40 quintals of fish, at $3		120.00
		2,120.00
Interest at 6 per cent from date of capture, April 25, 1898, to November 2, 1901, date of commissioner's report, 3 years 6 months 8 days		448.02
		2,568.02
Less proceeds returned to claimant (Rec. 23)	$121.69	
Interest at 6 per cent from date of return, April 16, 1900, to November 2, 1901, 1 year 6 months 28 days	11.52	
		133.21
		2,434.81
Add expenses of issuing and executing commission to Havana		21.75
Add as per court's decree (p. 65), costs	$25.00	
Interest at 6 per cent from November 2, 1901, to June 16, 1902, on $2,434.81	87.78	
		112.78
Total as of June 16, 1902, being the date of the court's final decree, with interest thereon at 6 per cent until paid		2,569.34

And as to the *Lola* the figures are:

THE LOLA.

[Of schooner rig, two masts, 35 tons burden, 15 years old or more; (Rec., pp. 9, 13, 24.)]

Capital value, price on resale	$1,800.00	
Less repairs, say (p. 40)	75.00	
		$1,725.00
Cargo, 100 quintals of fish, at $3		300.00
		$2,025.00
Interest at 6 per cent from April 27, 1898, to November 2, 1901, 3 years 6 months 6 days		366.53
		2,391.53
Less proceeds returned to claimants (p. 17)	$425.16	
Interest from April 16, 1900, to November 2, 1901, 1 year 6 months 17 days	39.47	
		464.63
		1,926.90
Add expenses issuing and executing commission in Havana		21.75
		1,948.65
Add costs	$25.00	
And interest on $1,948.65 from November 2, 1901, to June 16, 1902, 7 months 14 days	72.75	
		97.75
		2,046.40

With interest at 6 per cent from June 16, 1902.

We submit that the foregoing figures for the *Paquete* and *Lola*, respectively, offer a just and fair basis for reforming the decrees below.

ARGUMENT.

I.

AS TO THE MEASURE AND QUANTUM OF DAMAGES.

(*a*) *Considering the analogy of the general maritime rule.*

The principles governing damages for ordinary marine torts, when the punitive feature does not appear, follow the general rules of allowance of damages for injuries to property. The underlying idea is that the person injured shall be made whole—that he shall be put in the same position that he was in before, receiving interest also to bring his avails up to the date of judgment or payment. The doctrine as regards collision is stated by this court in *The Baltimore* (6 Wall., 377, 385), as follows:

> The damages which the owner of the injured vessel is entitled to recover are estimated in the same manner as in other suits of like nature for injuries to personal property, and the owner, as the suffering party, is not limited to compensation for the immediate effects of the injury inflicted, but the claim for compensation may extend to loss of freight, necessary expense incurred in making repairs, and unavoidable detention. *Restitutio in integrum* is the leading maxim in such cases, and where repairs are practicable the general rule followed by the Admiralty courts in such cases is that the damages assessed against the respondent shall be sufficient to restore the injured vessel to the condition in which she was at the time the collision occurred.

(See also *Williamson* v. *Barrett*, 13 How., 101; *Sturgis* v. *Clough*, 1 Wall., 269; *The Potomac*, 105 U. S., 630.)

In cases of total loss by collision "damages are limited to the value of the vessel, with interest thereon, and the net freight pending at the time of the collision." (*The Umbria*, 166 U. S., 404, 421.)

The text-books state the rule thus:

> In measuring the damages in a case of collision, all the direct and immediate consequences are to be taken into consideration, as loss of freight, detention, expense, and the like, the rule being *restitutio in integrum*. (1 Parsons on Shipping and Admiralty, pp. 539–540; see also 2 Sedgwick on Damages, secs. 592 *et seq.*; 1 Sutherland on Damages, p. 24.)

The rule as to damages in the cases of seizure is thus stated by Mr. Justice Story in the case of *The Apollon* (9 Wheat., 362):

> This court on various occasions has expressed its decided opinion that the probable profits of a voyage either upon the ship or cargo can not furnish any just basis for the computation of damages in cases of marine tort. * * * Where the vessel and cargo have been sold, the *gross amount of the sales*, together with interest, has been adopted as a fair recompense, and *the addition of 10 per cent* has been sometimes made where the property was sold under disadvantageous circumstances or had not arrived at the country of its destination. Such, it is believed, has been the rule most generally adopted in practice in cases which do not call for aggravated or vindictive damages.

Demurrage also is allowed where a vessel is held without probable cause. (*The Three Friends*, 166 U. S., 1; *The Conqueror*, id., 110, and cas. cit.)

The method applied in these cases far oversteps the rule of the *Apollon*; and the Government is willing to concede that the resales in the Havana market offer a fair measure of loss.

(*b*) *Considering the rule in prize.*

The rule in prize as to damages for seizures without probable cause is practically the same as that laid down in the case of the *Apollon*. In *The Lively* (1 Gall., 315), the court states the principle and refers to the general practice in that regard as follows:

> The damages, then, ought to be equal to the real injury sustained; and unless there have been personal indignities * * * the damages ought to go no farther. * * * In cases where the vessel and cargo have been captured, and afterwards lost to the owner, the Supreme Court of the United States have confined themselves to the prime value thereof and interest thereon to the judgment. * * * Nor does the rule of foreign courts on restitution seem materially to vary. Where the property has been sold, and no account of sales has been rendered, the value is estimated at the prime cost and 10 per cent profit; where an account of sales is rendered, that in general is made the measure of the decree. * * * The first object is to repair the actual damage and loss, and the next to punish aggravated misconduct. * * * An allowance of damages upon the basis of a calculation

> of profits is inadmissible. The rule would be in the highest degree unfavorable to the interests of the community. * * * Much would depend upon the length of the voyage, and the season of arrival. * * * After all, it would be a calculation upon conjecture and not upon facts. * * * Upon the whole I am well satisfied that the profits, upon the supposition of a prosperous termination of the voyage, ought not in any case to constitute an item of damage.

It seems to me that "prime cost" here should relate not to the original cost of new vessels but to the prices and values of these very vessels, as shown by their repurchase in the Havana market; and that if the probable profits of a particular voyage may not be considered in computing damage allowance, the test of average earnings through a series of years is also properly to be excluded.

The rules expressed in the *Lively* were the basis upon which damages were allowed in the cases of the *Charming Betsy*, 2 Cr., 64; *Maley* v. *Shattuck*, 3 Cr., 458; *The Lucy*, 3 C. Rob., 208; *The Narcissus*, 4 C. Rob., 20.

Cases like those cited and like the present ones are to be carefully distinguished from those where there was a gross marine trespass which involved outrages and the principle of punishment properly applicable thereto, not possible to be invoked in the present cases under the order of this court. (*The Amiable Nancy*, 3 Wheat., 546; *Del Col* v. *Arnold*, 3 Dall., 333; *The Anna Maria*, 2 Wheat., 327; *The San Juan Baptista*, 5 Rob., 33.

It is difficult to believe that vessels which sold for such moderate sums, even allowing for the unfavorable condition of sale, were worth at the time of capture the values which the commissioner and court below placed upon them. After all, they were second-hand boats, and the fair market value of the *res* must be taken into account as determined by its character and condition and the prices actually realized. This element must be kept in mind as well as the earning capacity and the profits yielded to owners. If one went to a fishing port to bargain for a schooner of the fishing fleet there, I imagine a sale would not be effected on the basis of earnings in an exceptional year or even in a normal year. I know no good reason why a court, sitting to measure damages for loss or injury, should not give weight to the obvious element, and in ordinary transactions the controlling element, of market value. Old and second-hand boats are numerous in the markets and notoriously of low, uncertain, and diminishing value. The views of owners and parties in interest are pretty uniformly inflated, and a certain steady and natural doubt exists as to their statements of original cost, present value, and earning capacity. I can perceive no good reason why the court market should be so much more favorable than any other.

Moreover, it is to be observed that we are dealing after all with enemy property, benefited by an exemption not the less of grace because it is now recognized as a settled usage of international law; but still we are dealing with enemy property. Not only so, but

these vessels, however innocently, were seeking to reach Havana and to take into that beleaguered port men who might be valuable in resistance or defense, and much needed food supplies. Our own blockade operations and the imminency of war for weeks before had greatly enhanced the value of food supplies, including fresh fish, and doubtless for that reason enhanced the real or supposed value for the time being of boats and other instruments which brought fish and different provisions. The court will remember the evidence of concentration of food supplies at Havana which was presented in the *Carlos Roses* case (177 U. S., 655). However much this idea may be repelled by the statements in evidence that the tests of value here relate to normal conditions and usual times, it is almost inevitable that claimants should import into the case some reflection of the war status which temporarily gave their property an abnormal value.

I do not mean to intimate any lack of honesty or *bona fides* in their statements and claims. But why should the United States, whose belligerent operations caused this condition, pay its enemy for a result which was manifestly one of the intended compulsions of war, viz, the reduction of the enemy partly through the deprivations and rigors of a siege? It seems to me contrary to just public policy for this country to bear *pro tanto* the burden which its own war arm was seeking to place upon the enemy. I submit that this court should itself resettle the allowance of damages on a reduced basis, or else send the case back to the lower court for this purpose.

II.

ON RESPONSIBILITY AS BETWEEN THE GOVERNMENT AND THE NAVAL CAPTORS.

(*a*) *The general aspect of the case.*

The Government is very well aware that the rules of prize law impose in this matter a great burden upon individual officers who were simply performing their duty as they saw it, and who had no desire or intent to break a rule of law.

The imposition of costs and damages upon the captors will tax officers whose conduct was actuated by a high sense of duty, and who, especially because of the insignificant money value of the vessels taken, were not influenced by sordid motives. This burden, regarding the innocent intent of these officers and the absence of malicious motive, may be looked upon in a general way as unmerited. Yet such an imposition of costs and damages is in accordance with a well-recognized rule of prize law, followed in this country and in England by the greatest jurists of both nations. And the Government, however individuals may regret the necessity for placing this financial loss upon brave and honorable officers, must contend before this court for the rule of law as it exists.

The official correspondence relative to these captures consisted of a telegram sent by Admiral Sampson after the seizure to the Secretary of the Navy, in effect recommending capture of such vessels and detention of their crews as prisoners of war since they belonged to the Spanish naval reserve; and of the Secretary's

reply that "Spanish fishing vessels attempting to violate blockade are subject, with crew, to capture, and any such vessel or crew considered likely to aid enemy may be detained." The view of the court upon this interchange was that—

> The admiral's dispatch assumed that he was not authorized, without express order, to arrest coast fishermen peaceably pursuing their calling; and the necessary implication and evident intent of the response of the Navy Department were that Spanish coast fishing vessels and their crews should not be interfered with so long as they neither attempted to violate the blockade nor were considered likely to aid the enemy. (175 U. S., 713.)

From this it is a fair inference that in the view of the court, however innocent and free from intent to commit a trespass the naval captors were, their course finds no justification in correspondence or instruction from the Navy Department, which presents the clear intimation that their mistaken construction of the rule of international law and their action in making the seizures are to be charged to themselves and render them personally liable.

(*b*) *Principles as to Government liability for torts.*

The fundamental principle is that the Government is not liable for torts or for tortious or unauthorized acts of its agents, and, in general, can not be sued except as it may have expressly rendered itself liable to suit. (*Robertson* v. *Sichel*, 127 U. S., 507; *Gibbons* v. *United States*, 8 Wall., 269; *Whiteside* v. *United States*, 93

U. S., 247; *Hart* v. *United States*, 95 U. S., 316; *Moffat* v. *United States*, 112 U. S., 24.) The United States is not liable for costs, and a judgment against it for costs will be reversed. (*United States* v. *Barker*, 2 Wheat., 395; *The Antelope*, 12 Wheat., 546; *United States* v. *McLemore*, 4 How., 286; *United States* v. *Boyd*, 5 How., 29; *Reeside* v. *Walker*, 11 How., 272; and see *Stanley* v. *Schwalby*, 162 U. S., 255.) A money judgment can be rendered against the United States by the Court of Claims only. (*Case* v. *Terrell*, 11 Wall., 199; *The Siren*, 7 Wall., 152; *The Davis*, 10, id., 15.)

(*c*) *The prize rule on this subject.*

Story says, in Principles and Practice of Prize Courts, page 42, "The general rule in respect to public ships is that the actual wrongdoer, and he alone, is responsible," citing English authorities and *The Eleanor* (2 Wheat., 346).

In *The Eleanor* the claim was that a loss of the prize through a tempest was due to a doubtful strategem on the part of the captors resulting in the refusal of the crew found on the prize to do their duty. The decree below found damages due to the claimants against the commander of the squadron.

The opinion intimates that if the facts of the case had made out a marine trespass, the captain of the capturing vessel, who had died after the filing of the libel, would have been liable.

In *Maley* v. *Shattuck* (3 Cr., 458) it appears that Maley was a lieutenant of the Navy commanding a

public armed vessel of the United States, who stopped and searched a neutral vessel and, upon the suspicion that she was enemy property or an American vessel engaged in a violation of the nonintercourse act, put a prize crew on board, and soon after the vessel was captured as prize by a British vessel of war, carried to Jamaica and libeled, and condemned there as French or Spanish property. The judgment of the court was that Lieutenant Maley had a right to stop and search the vessel and to exercise his judgment on the propriety of detaining her, but that he appears to have come to a decision not warranted by the testimony presented to him. The court was of opinion that Shattuck's claim against Maley for the costs of an ineffectual attempt to reverse the sentence of the court in Jamaica ought not to be allowed, since through the claimant's own fault it was not prosecuted in time, but affirmed the sentence of the circuit court awarding compensation for the vessel and her cargo against Maley, with certain collateral claims and expenses.

It is to be noted that the Attorney-General appeared for Maley.

The case of *Little* v. *Barreme* (2 Cr., 170) was an action brought by the neutral owner or master against the captor, and restitution was ordered below, but not damages, because in the court's opinion there was probable cause. On appeal to the circuit court this sentence was reversed and damages allowed. Marshall, C. J., held that it was not a case in which probable cause existed to produce suspicion; that instructions of

the President to the commander of a public armed vessel of the United States to do an illegal act do not justify the officer in doing it, nor so far excuse him as to exempt him from the payment of damages.

> I confess the first bias of my mind was very strong in favor of the opinion that though the instructions of the executive could not give a right, they might yet excuse from damages. I was much inclined to think that a distinction ought to be taken between acts of civil and those of military officers, and between proceedings within the body of the country and those on the high seas. That implicit obedience which military men usually pay to the orders of their superiors, which indeed is indispensably necessary to every military system, appeared to me strongly to imply the principle that those orders, if not to perform a prohibited act, ought to justify the person whose general duty it is to obey them, and who is placed by the laws of his country in a situation which in general requires that he should obey them. I was strongly inclined to think that where in consequence of orders from the legitimate authority a vessel is seized with pure intention, the claim of the injured party for damages would be against that government from which the orders proceeded, and would be a proper subject for negotiation. But I have been convinced that I was mistaken, and I have receded from this first opinion. I acquiesce in that of my brethren, which is that the instructions can not change the nature of the transaction or legalize an act which without those instructions would have been a plain tres-

> pass. * * * Captain Little, then, must be answerable in damages to the owner of this neutral vessel.

In *The Mentor* (1 Rob., 129), an American ship was destroyed by part of Admiral Digby's squadron after the cessation of hostilities, and it was held that the actual wrongdoer is the person responsible for injuries of seizure, and the suit, which was against the admiral of the station, was dismissed on the ground that the admiral was not privy to the fact.

In the courts below (see Digest Federal Cases, title "War," secs. 34, 37) the cases involve privateers, the owners as well as officers of which are liable for damages. These cases for the most part refer to "unjustifiable conduct toward the property" or to personal ill-usage of the captured crew by the captors.

In *The Freya* (5 Rob., 75) there was a demand for damages on the part of a neutral vessel captured and brought to Dover, and there, in the performance of quarantine, assigned to an unfit berth before admission into the harbor. The court said that no blame attached to the captors, but since considerable injury had been received by the neutral vessel brought in by force, it seemed but proper that the matter should be presented to the Government as a damage fit to be redressed from that quarter, since it had happened under the management of the public officers of the port, though without any misconduct imputable to them.

In the *San Juan Baptista* and *La Purissima Conception* (5 Rob., 32) the master of the captor, a privateer,

ill treated the crew of the prize without sufficient justification, but also without malignant motive. Sir William Scott's judgment was that if such motive had been proved, it would have been his duty to pursue the matter much farther. As the case was, however, the conduct of the captor not being justified, he held that it was due to the honor of the country and to the injury the Spaniards had sustained that some civil compensation should be made, and decreed £100 to be distributed among the sufferers. Presumably this decree ran against the capturing privateer.

In *Die Fire Damer* (5 Rob., 357) the owners of a privateer were held liable for the improper conduct of the prize master.

In *The William* (6 Rob., 316) restitution in value was decreed against the captor for a ship and cargo lost in going into Guernsey, owing to the want of skill of the prize master who had refused to take a pilot on board.

In the foregoing cases it seems to be clear that most of them involve privateers, and that in all of them the payment of damages allowed was imposed upon the captors individually.

In *Der Mohr* (3 Rob., 129), a prize ship was lost owning to the ignorance and willfulness of the prize master, and the owner claimed restitution in value. The court thought it was undoubtedly a case of calamity, but that the gentlemen of the Navy were civilly answerable for the misconduct of the prize master, who was their agent, and restitution in value to the neutral owner was directed.

In a later case, respecting the freight of this ship (4 Rob., 315), it was held that the freight was not limited to the proceeds of the cargo saved, but was decreed *in toto* against the captors. If the loss had happened by accident only, the captor having made a justifiable seizure would not have been liable to any restitution.

> But the court has already pronounced this loss not to have arisen from any casual misfortune. * * * With respect to the attachment that is prayed against Captain Talbot, as long as the hope is held out that the assistance of government may be obtained in aid of the captor, it will be better to let this matter stand over. There must undoubtedly be a time when this forbearance must terminate, whatever the consequences may be. But at present I will content myself by pronouncing that the whole freight is due in value from the captor.

A note states that on a subsequent day the court was informed that directions had been given by government for the payment of the amount of this restitution.

In *The Acteon* (2 Dods., 48) it was decided that a captor, although actuated by a sense of public duty only in destroying property he has taken, is nevertheless responsible in the fullest extent to the claimant, and must look to his own government for indemnification. The general rule is said to be that if a party is unjustly deprived of his property he ought to be put as nearly as possible in the same state in which he was when the deprivation took place, and that if the captor

has been guilty of no willful misconduct, but has acted from error and mistake only, the suffering party is still entitled to full compensation. So, also, if the destruction of property taken may have been a meritorious act of the captor toward his own government, still the claimant must not be a sufferer. The captor "must look to the government for his indemnity. The loss must not be permitted to fall on the innocent sufferer. * * * If, as I believe to have been the case, [Captain Capel] has acted from a sense of duty and of obedience * * * I can have no doubt that he will be indemnified upon a proper representation being made to the government."

The Nemesis (Edw., 50) was the case of a prize brought into Falmouth Roads and there lost. The ship and cargo were clearly English property, and the *indicia* of that character and the evidence of innocence were considered by the court to be so clear that there was no excuse for sending her in.

> In those peculiar circumstances in which gentlemen of the Navy are often placed, having to decide and act in an instant on questions which are replete with difficulties that embarrass the court itself under all the advantages of a deliberate judicial investigation, it can not but feel great anxiety to protect them, perhaps sometimes even beyond what can be strictly reconciled with principle; but here was no difficulty at all, and if there had been any, the officer might have referred himself to his admiral, who was close to him. Acting under his orders, he would have been protected.

The court found the officer's conduct to be "equally wanting in respect to the admiral and in justice to those who were the victims of it; nothing has been suggested that affords any apology, and it is therefore with the most perfect satisfaction that I pronounce this to be a case of cost and damages"—which were evidently charged against the officer.

The Crimean war cases—*The Elize* (Spinks Prize Cases, 88), *The Ostsee* (id., 174), *The Leucade* (id., 217), *The Fortuna* (id., 307)—review the principles and authorities on the question whether, if the captor has been guilty of no willful misconduct, but has acted from error and mistake only, the suffering party is still entitled to full compensation. It is perfectly clear, however, from these and the earlier cases cited, that in England, where damages are allowed to claimants, the naval captors themselves are liable, and the propriety of indemnity by the Government is entirely committed to the executive or the legislature; and it is evident that the captors' liability arises upon a finding without probable cause, which is fully justified, although the officers may have been without willful fault.

See also, on the subject, sections 4648 and 4649, Revised Statutes. The former evidently contemplat the case of a condemnation, because the compensation for special counsel which is allowed is to be paid "either from the entire fund or from the portion awarded to the captors," although the services rendered may be on a matter as to which the captors

have an adverse interest to the United States. Section 4649 permits the fees of special counsel for the defense of captors against demands for damages, when audited and allowed by the Department incurring or authorizing them, and by the Solicitor of the Treasury, to be paid out of the judiciary fund. The inference from this certainly is not that the Government is liable, but the contrary. The Government simply helps captors make their defense.

In the comparatively few cases during the civil war in which the vessels were not condemned on appeal, the Supreme Court, for the most part, found that there was probable cause for the capture, and directed restitution without allowing costs and expenses to the claimants, or apportioned the costs and expenses between the claimants and the captors, and sometimes allowed the captors their expenses against the claimants.

In the case of *The Thompson* (3 Wall., 155), the concluding paragraph of the opinion is: "The district court committed no error in refusing to give the claimants damages and costs as against the United States or the captors."

In *The Teresita* (5 Wall., 180) it was directed, under a decree of restitution, that the costs and expenses should be paid by the captors.

(*d*) *The precedents show that relief for the naval captors has been obtained through Congress.*

An examination of the statutes discloses the following acts upon the subject:

Act of April 14, 1802 (6 Stat., 47), appropriates the

amount of damages and costs awarded by the circuit court of Pennsylvania in favor of a neutral against William Maley, commanding the *Experiment*, for the capture and detention of the schooner *Amphitheatre*. The act of January 31, 1805 (6 Stat., 56), appropriates for the relief of Captain Murray, of the *Constellation*, relative to the seizure of the *Charming Betsey*.

The act of January 17, 1807 (id., 63), directs the accounting officers to liquidate and adjust with George Little, commander of the *Boston*, the damages, interest, and charges in the case of the *Flying Fish*, wherein judgment was ultimately rendered in the circuit court in pursuance of the decision of the Supreme Court in *Little* v. *Barreme* (*supra*).

By act of February 2, 1813 (id., 116), damages allowed Shattuck (see 3 Cr., 458) against Lieutenant Maley—for whom appearance was entered and defense conducted by the attorney of the United States for the district of Pennsylvania, in pursuance of instructions given to him by the Executive (in the Supreme Court the Attorney-General appeared)—were paid out of the Treasury.

Act of May 26, 1828 (id., 394), allows to a British shipowner, an assignee of underwriters, a sum in full satisfaction for the capture and destruction of the ship by the *Peacock* after the period fixed by the treaty of Ghent for the termination of hostilities.

Act of January 17, 1862 (12 Stat., 901), appropriates compensation to a British vessel owner in consequence of detention by the U. S. S. *Massachusetts* under the

impression that she had unlawfully evaded the blockade of the port of Mobile. Here there seem to have been no proceedings for adjudication.

Act of April 25, 1862 (id., 902), allows damages to a neutral by reason of a wrongful seizure and detention by the *Morning Light*, a vessel of the United States blockading squadron, in pursuance of the award of arbitrators, to whom the claim seems to have been referred by the Executive. So also the act of May 12, 1862 (id., 903), appropriated the amount of damages awarded to another neutral on the same ground of complaint, and by the same arbitrators. These doubtless were cases of diplomatic reclamation.

By act of February 14, 1863 (id., 916), compensation was awarded to a neutral for damages sustained by reason of being prevented by the blockading force at Charleston from leaving the said port with cargo, the said bark having innocently entered during a brief interval during which the blockading force was absent. This also was diplomatic.

Act of February 13, 1864 (13 Stat., 575), appropriated the amount awarded as indemnification by the United States district court for the southern district of New York for costs, damages, and expenses, by reason of the illegal seizure of a British schooner.

Act of March 22, 1864 (13 Stat., 577), indemnifies French owners, but there is no reference to previous proceedings or adjudication.

Act of July 25, 1866 (14 Stat., 601), appropriates compensation by reason of wrongful seizure and deten-

tion of the British ship *Magicien* by the *Onward*, according to an award of Messrs. Evarts and Archbold under an agreement between the Secretary of State and the British minister.

Act of July 27, 1868 (15 Stat., 243), protects officers and agents of the Government in suits against them for acts done during the rebellion by virtue of their office, who are to be defended by the Attorney-General; these proceedings refer to cases arising under the acts relative to captured and abandoned property and respecting commercial intercourse between the loyal and insurrectionary States.

Act of July 7, 1870 (16 Stat., 649), appropriates to the owners of the British steamer *Labuan*, and to part owners of the cargo, the sums due under a decree of the district court for the southern district of New York on account of illegal capture by a cruiser of the United States. So also an act of the same date (ib.) appropriates to claimants in the case of the British schooner *Flying Scud* and her cargo sums due on account of illegal capture awarded by the United States district court for the district of Louisiana.

Act of July 8, 1870 (id., 650), makes a similar appropriation in the case of the English schooner *Sibyl*, to carry into effect a decree of the district court for the southern district of New York.

An act of the same date (ib.) makes a similar appropriation in the cases of the British brig *Volant* and the British bark *Science*, heard in the district court for the district of Louisiana.

Act of July 8, 1870 (id., 61), directed the proper payments to be made to carry into effect the decree of the district court for the district of Louisiana in the case of the British brig *Dashing Wave* and her cargo illegally seized.

Coming down to the present time, the urgent deficiency act of February 14, 1902, made appropriation for the payment of a judgment rendered by the United States district court for the northern district of Florida against the collector of customs for the illegal seizure and detention of the *Monarch*, suspected of filibustering.

This review of the statutes and the decisions establishes the following propositions: We submit that where damages for illegal seizure have been allowed, the Government is not liable because of the general doctrine protecting governments from liabilities unless self-imposed, and because, irrespective of innocent intent and proper motive, naval captors have uniformly been held liable in such cases arising in prize; that the liability is that of the individual commander of the capturing vessel, and that where the seizure is without probable cause it is he and not the admiral of the fleet or the squadron commander who is to be charged; that in this country the principle is fully recognized, and the precedents show that where the officer has not been in fault and it is a proper case for indemnification, he is indemnified by acts of Congress, which fact in itself establishes his liability before the courts.

Recurring finally for a moment to the measure of damages, the commissioner intimates that even his

liberal allowances do not fully compensate the claimants; that their expenses, not included in the award, comprise counsel fees and various costs of their litigation. Of course such elements are not embraced; counsel fees and other *ex parte* legal expenses are not usually or properly covered into the computation and allowance of damages. These intimations show the commissioner's strong leaning. Furthermore, it is very apparent that no consideration of the condition and age of these boats, the local knowledge at Key West regarding them as having been built or owned there, and regarding their values, has been allowed to affect the matter in the commissioner's mind, nor has he seemingly given a thought to the significant fact that in the commercial relations and ready interchanges existing between Key West and Havana these vessels were all sold back to parties in Havana and most probably to the claimants, and that for this reason the prices on resale should have been given great weight against the claimants. Every element and presumption and show of proof has been taken in favor of the claimants and against the Government. The food cargoes were allowed for at their swollen blockade values. Interest at 8 per cent, a proper enough basis, say in the year 1850, was granted. I respectfully submit that this is out of all reason, and that some qualification of this ready and easy method of grant to claimants against the Government should be imposed, either by this court or by the court below under the order of this court.

Again, as to responsibility—this is doubtless a case which will present a strong claim and appeal for indemnity to the liberal discretion of Congress; and one also in which the Executive might, with entire propriety, represent the facts and make a favorable recommendation in behalf of the officers of the Navy subjected to this liability.

I submit, therefore, that the decrees herein should be reversed; that the damages allowed should be readjusted, and that the proper amount thereof, as hereafter determined by this court or the court below, should be charged against the respective naval captors commanding the various capturing vessels, and not against the United States.

HENRY M. HOYT,
Solicitor-General.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

The United States, Libelant-Apellant, against The Paquete Habana, Justa Galban *et al.*, Claimants-Appellees.	No. 578.
The United States, Libelant-Apellant, against The Lola, Severo Gonzales, Claimant-Appellees.	No. 579.

BRIEF FOR APPELLEES.

STATEMENT.

These are appeals from final decrees of the District Court, for the Southern District of Florida, entered in pursuance of the mandate of this court issued under the decision on the previous appeals. *The Paquete Habana, The Lola*, 175 U. S., 677.

On motion of the Solicitor-General the court has ordered that all the fishing smack cases be advanced for argument on March 16, 1903, and that *The Paquete Habana* and *The Lola* be heard as one case.

It was determined on the previous appeal that the vessels and their fish were not lawful prize of war, and that the captures had been made without probable cause. 175 U. S., at p. 714. The mandate directed the District Court, in each case, "to enter a decree that the *proceeds of the sale of the vessel, together with the proceeds of the sale of her cargo, be restored to the claimant with damages and costs,*" but that "*the damages to be allowed shall be compensatory only* and not punitive." *Paquete Habana Rec.*, p. 20; *Lola Rec.*, p. 15.

In pursuance of these directions the proceeds of the sales of the vessels were duly paid over to the claimants on April 5, 1900. *Paquete Habana Rec.*, p. 23; *Lola Rec.*, p. 17.

Interlocutory decrees were entered in accordance with the terms of the mandates, and, by request of the parties, the assessment of the compensatory damages to be recovered by the claimants was referred to Eugene O. Locke, Esq., United States Commissioner, who is also the clerk of the court. *Paquete Habana Rec.*, p. 21; *Lola Rec.*, p. 16.

Testimony in behalf of the claimants of both vessels was taken in Havana under a commission issued to Hon. Joseph A. Springer, Commissioner, in August, 1900.

The witnesses thus examined in the *Paquete Habana* case were Jose Pasos, a part owner of the vessel (p. 27). Juan Lluria, a shipwright and shipbuilder, and, at the time of his examination, Harbor Master of the Port of Havana (p. 29), who testified to the value of the vessel; and Francis Gandon (p. 30) and Antonio Suarez (p. 31), who testified to the value of the fish.

In the *Lola* case the witnesses examined were Severo Gonzales, owner of the vessel (p. 22), Juan Lluria, shipwright, shipbuilder, and Harbor Master of the Port of Havana (p. 22), who gave evidence of the value of the vessel; and Francis Gonzales and Antonio Suarez, who testified to the value of the fish. *Rec.*, p. 25.

Cross-interrogatories were duly administered to all these witnesses by the United States Attorney, and by the Proctors for the Naval Captors.

At the final hearing before the Commissioner, on August 6, 1901, the United States examined as a witness John F. Horr, the United States Marshal for the Southern District of Florida, who testified in relation to all the smacks. *Paquete Habana Rec.*, p. 32.

The United States Attorney reserved leave to put in further evidence after the hearing. *Paquete Habana Rec.*, p. 55; *Lola Rec.*, p. 51.

On October 7, 1901, the United States Attorney took the depositions of seven witnesses in Key West. These depositions are entitled in all the cases, and are printed at length in the Paquete Habana record, at pp. 40-52. The witnesses thus examined were Samuel Cates, whose

occupation was the sponge business (*Paquete Habana Rec.*, p. 40); William D. Cash, a merchant (p. 43); Milton Curry, a merchant (p. 46); Alfred Atchison, a seaman (p. 48); William Reedy, a liquor dealer (p. 50); and William B. Curry, an auctioneer (p. 52).

It should be noted, however, that all the witnesses did not testify about all the vessels. None of them expressed any opinion as to the value of the *Paquete Habana*. Cates testified with reference to the *Espana* and the *Oriente* (*Paquete Habana Rec.*, pp. 40, 41); Cash, with reference to the *Poder De Dios* and *Antonio y Paco* (pp. 43, 44); Milton Curry, with reference to the *Severito* and the *Lola* (p. 45); Lowe, with reference to the *Cuatro de Setiembre* and the *Engracia* (pp. 46, 47); Atchison, with reference to the *Santiago Apostal* and the *Oriente* (pp. 48, 49); Reedy, with reference to the *Antonio Suarez;* William Curry, with reference to the *Poder De Dios* and the *Antonio y Paco* (pp. 52, 53).

On the testimony thus produced the commissioner assessed the compensatory damages to be recovered by the owners of the *Paquete Habana* as follows:

Value of the vessel at the time of her capture	$4,500.00
Interest to the date of the report, November 2, 1901	1,287.00
Total	$5,787.00
Less proceeds of sale previously paid to the claimant	121.69
Balance	$5,665.31
Expenses of issuing and executing the commission to Havana	21.75
	$5,688.06

(*Rec.*, p. 58).

The grounds on which the commissioner proceeded, in ascertaining the damages, are set forth in his opinion relating to all the cases, which is printed in full in the Paquete Habana record at pages 55-58.

There were no exceptions to the report by the proctors for the captors.

The United States Attorney excepted to the report on the following grounds:

1. The amount allowed as compensatory damages is excessive and not sustained by the evidence.

2. The value of the vessel as ascertained by the commissioner is contrary to the evidence.

3. The commissioner erred in disregarding the testimony of the witness John F. Horr for the United States.

4. The commissioner erred in not hearing and sustaining the objections to the interrogatories propounded to the witnesses examined under the commission at Havana.

5. The commissioner, by his report, appears to have disregarded the testimony of the several witnesses for the United States examined in Key West.

6. The commissioner erred in limiting his consideration of the value of the vessel to the testimony as to the cost and alleged market values in Havana, Cuba, only. *Rec.*, pp. 59, 60.

The exceptions were fully argued, and were considered by the District Judge (p. 60). The report was in all things confirmed, with an allowance of $25 to the commissioner for his services on the reference. *Rec.*, p. 63. An order of confirmation was entered on May 19, 1902 (p. 63). It was also ordered, at the same time, that the owners be substituted in place of the master as claimants (p. 63).

It had been agreed, by a stipulation between the proctors for the respective parties, that the "damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors as to justice may appertain, and as the legal responsibility therefor may appear; and that either party

shall have the right to review the decree entered pursuant to said mandate on the question of the amount of damages, and the United States, the naval captors, or the claimant, shall have the right to review such decree on the question whether the ultimate legal responsibility for such costs and damages rests upon the United States or upon the naval captors." P. 22.

The interlocutory decree which was entered on the mandate, and in pursuance of this stipulation, was approved as to form by the Attorney-General, and by the counsel for the captors. P. 22. It provided, among other things:

"2. That the libel herein be and the same hereby is dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs; the question whether such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages." *Record,* p. 21.

In pursuance of this provision of the interlocutory decree, notice was given, on June 6, 1902, to the Attorney-General, the United States Attorney for the Southern District of Florida, and the proctors for the naval captors, that a further hearing would be had on June 16th, "on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned be-

tween the United States and the naval captors, as provided in the interlocutory decree entered herein on or about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants." *Paquete Habana Rec.*, p. 65.

At the time appointed, the District Judge, "after hearing the attorney for the United States and the attorney for the naval captors," determined that the damages were to be paid by the United States, and entered a decree that the claimants have, receive and recover from the United States the amount of the commissioner's report, with additional interest from the date thereof to the date of the decree, together with the amount of the commissioner's charge on the reference, making in all the sum of $5,992.52. *Paquete Habana Rec.*, pp. 64, 65.

Similar proceedings were had in the case of the *Lola*. The stipulation between counsel for the respective parties, and the interlocutory decree are in the same form. *Lola Rec.*, pp. 16, 17. The same proceedings were had on the reference before the commissioner as in the other case.

The damages to be recovered by the owners of the *Lola* were determined, by the commissioner, as follows:

Value of the vessel	$5,000.00
100 quintals of fresh fish	500.00
	$5,500.00
Interest to date of report, November 2, 1901	1,547.32
Total	$7,047.32
Less proceeds of sale previously paid to claimant	425.16
Balance	$6,622.16
Expenses of issuing and executing the commission to Havana	21.75
Total	$6,643.91

(*Rec.*, p. 50).

The exceptions to this report by the United States Attorney were identical in form with those previously quoted in the case of the Paquete Habana. *Rec.*, p. 54. The exceptions were overruled, and the report was duly confirmed with an allowance to the commissioner for his services on the reference. *Rec.*, p. 58. An order of confirmation was entered May 19, 1902 (p. 60). It was also ordered, at the same time, that the owners be substituted in place of the master as claimants (p. 60).

On June 6, 1902, notice of hearing on the question of responsibility for the damages, as between the United States and the naval captors, was given for June 16th (*Rec.*, pp. 58, 59); and on that date, "after hearing the

attorney for the United States and the attorneys for the naval captors, and on motion of the proctors for the claimants, a final decree was entered for the amount found to be due by the commissioner with the addition of the commissioner's charges on reference, and interest to date of the decree, making in all the sum of $6,966.55.

Thereupon, and on June 24, 1902, the United States appealed from the final decree in each case, and filed an assignment of errors, which is entitled in all the cases, as follows:

FIRST.—The court erred in sustaining the report of the commissioner as to the amount of damages sustained by the claimant.

SECOND.—The court erred in overruling the exceptions filed by the complaint to the report of the commissioner.

THIRD.—The damages awarded to the claimant are excessive and exorbitant.

FOURTH.—The court erred in overruling the motion of the complainant to have the damages awarded against the captors.

FIFTH.—The court erred in awarding damages herein against the United States. *Paquete Habana Rec.*, p. 66; *Lola Rec.*, p. 60.

Only two questions are presented for consideration by the Brief for the Government: 1, as to the measure and quantum of damages; and, 2, the responsibility for the damages as between the Government and the captors.

FIRST POINT.

NO SUFFICIENT GROUND FOR THE REVERSAL OF THE DECREE IS SHOWN, SO FAR AS THE QUANTUM OF THE DAMAGES IS CONCERNED.

1. There is no serious dispute as to the principle on which the damages are to be assessed. The claimants are entitled to "fair indemnity for the losses sustained by the seizure." *The Nuestra Senora De Regla,* 17 Wall., 29, 31. The owners of the vessels being Cubans, and the vessels having been seized in Cuban waters when about to enter Cuban ports, the damages are naturally to be measured with reference to the value of the vessels and property in Cuba rather than in the United States. *Bates* v. *Clark,* 95 U. S., 204, 210. The damages to be awarded should be equivalent to the injury sustained. *The Lively,* 1 Gallison, 315; *Hetzel* v. *Baltimore & Ohio Ry.,* 169 U. S., 26. This principle is impliedly recognized in the mandates issued under the previous decision, which provided that the damages should be "compensatory." *Paquete Habana Rec. 1,* pp. 19, 20; *Lola Rec.,* pp. 14, 15.

On filing the mandate in the District Court, the interlocutory decrees, which were consented to as to form, by all the parties, contained this provision:

"That it be referred by request of the parties to Eugene O. Locke, Esq., United States Commissioner, to

ascertain and report to the Court, with all convenient speed, the amount of the compensatory damages to be recovered by the claimant herein, in conformity with this decree, and with the opinion and decrees of the Supreme Court herein." *Paquete Habana Rec.*, pp. 21, 22; *Lola Rec.*, p. 15.

Mr. Locke was the Clerk of the Court. *Paquete Habana Rec.*, p. 67; *Lola Rec.*, p. 61. The Court sat in Key West during the war, and Commissioner Locke, by virtue of his office, must have had knowledge of the conditions at that place, as well as of the vessels themselves.

The legal principles to be applied in considering the effect of his decision and reports, are well summarized by the Court of Appeals of the Fourth Circuit in *The Elton*, 83 Fed. Rep., 519, 520. Simonton, Circuit Judge, there said:

"The reference to a commissioner was authorized by Rule 44 in Admiralty. The Commissioner, under that rule, had and possessed all the powers in the premises which are usually given to, and exercised by, masters in chancery in references to them. The reference was with the written consent of parties, and was presented to and made by the court as the result of such consent. The same regard must be had for the findings of the commissioner, under these circumstances, as would have been shown to the findings in a report of a master in chancery. The conclusions of a master on matters of fact are, under all circumstances, entitled to great respect. *Medskar* v. *Bonebrake*, 108 U. S., 66, 71, 72; *Tilghman* v. *Proctor*, 121 U. S., 136, 149, 150; *Callaghan* v. *Myers*, 128 U. S., 617, 666, 667. And when, as in this case, both parties present to the court a consent-order providing for a re-

port by the master of his conclusions upon the facts and the law, the court will not disturb his conclusions of fact unless they are clearly in conflict with the weight of the evidence. *Kimberley* v. *Arms*, 121 U. S., 512, 524. The rule is clearly stated by Mr. Justice Brown in *Davis* v. *Schwartz*, 155 U. S., 631, 636: 'As the case was referred by the court to a master to report not the evidence merely, but the facts of the case and his conclusions of law thereon, we think that his finding, so far as it involves questions of fact, is attended by a presumption of correctness similar to that in the case of a finding by a referee, the special verdict of a jury, the findings of a circuit court in a case tried by the court under Rev. Stat., Sec. 649, *or in an admiralty cause appealed to this court.* In neither of these cases is the finding absolutely conclusive, as if there be no testimony to support it; but, so far as it depends upon conflicting testimony, or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable.' *Wiscart* v. *D'Auchy*, 3 Dall., 321; *Bond* v. *Brown*, 12 How., 254; *Graham* v. *Bayne*, 18 How., 60, 62; *Norris* v. *Jackson*, 9 Wall., 125; *Insurance Co.* v. *Folsom*, 18 Wall., 237, 249; *The Abbotsford*, 98 U. S., 440." To the same effect are *Crawford* v. *Neill*, 144 U. S., 585, 596; *Furrer* v. *Ferris*, 145 U. S., 131.

The order of reference on consent in this case left the determination of matters of law as well as of fact, with relation to the damages, to the Commissioner, and called for his report as to the amount to be recovered. It appears, therefore, to be within the rule just stated. But, if it should be considered that the order merely called on the Commissioner to report his conclusions on matters of fact, his decision would still be entitled to much weight.

Thus in *Tilghman* v. *Proctor*, 125 U. S., 136, 149, Mr.

Justice Gray, in dealing with the weight to be attached to a master's report on matters of fact, said:

"We are then brought to a consideration of the exceptions taken to the master's report in matters of fact affecting the accuracy of his conclusions in respect to the amount of those profits, gains and savings. In dealing with these exceptions the conclusions of the master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part. *Medskar* v. *Bonebrake*, 108 U. S., 66; *Donnell* v. *Columbian Ins. Co.*, 3 Sumner, 366, 371; *Mason* v. *Crosby*, 3 Woodb. & Min., 258, 269; *Paddock* v. *Commercial Ins. Co.*, 104 Mass., 521, 531; *Richards* v. *Todd*, 127 Mass., 167, 172."

These observations apply *a fortiori*, in this case, because the headquarters of the District Court for the Southern District of Florida were, until quite recently at Key West, and there is every reasonable probability not only that the Clerk of the Court knew the general conditions at that place, which affected the value of boats of this class, but also that he knew the qualifications of all the witnesses who were examined on behalf of the United States at that place.

Judge Locke, who had also resided for many years at Key West, heard argument on the exceptions to the report, and, after consideration, overruled them, and ordered that the report be confirmed (pp. 60, 63).

The case comes before the Court, therefore, with the concurrent finding of the Commissioner and the Court in favor of the claimants on this subject. If the case is

not strictly within the rule under which this Court uniformly declines to interfere, except for manifest error, with the concurrent finding of two lower courts (*The Ship Marcellus*, 1 Black, 414; *The Conqueror*, 166 U. S., 110, 136), it would seem that an analogous principle should be applied.

In *The Conqueror, supra*, at p. 136, Mr. Justice Brown said that whether the charges there discussed "were proper or not, was a matter for the courts below to determine in the exercise of their best judgment; and as the commissioner found that they were, and both the District Court and the Circuit Court of Appeals affirmed his action in that regard, we are not disposed to disturb their finding, although the amount seems large."

2. The evidence produced on the part of the claimants, in the case of the *Paquete Habana*, consisted of the depositions of Jose Pazos, part owner of the vessel (p. 27), Juan Lluria (p. 29), a shipbuilder and shipwright, who was harbor master of the port of Havana, during the period of the American occupation, and at the time of his examination, who testified as to the value of the vessel at the time of the capture; and Francis Gandon and Antonio Suarez (pp. 28, 31), who testified as to the value of fish.

Pazos testified that he and two of his brothers owned jointly a half interest in the vessel, and that Dona Justa Galban owned the other half. The Pazos brothers had paid $2,400 Spanish gold for their half of the vessel, at a

time not precisely stated, but which was between the year 1892, when the vessel was purchased in Havana, and the time of her capture (pp. 27, 28). It is to be inferred that they had bought their interest about two years before the capture. *Ans. to 8th Int.*, p. 28. Repairs had been made to the vessel after they bought their interest in her, and with those repairs "the appraised value the vessel had, at the time of her capture, was $4,500" (p. 27).

Juan Lluria, a man of ripe experience, testified that he was a shipwright, a master ship carpenter and builder, by occupation, and that at the time of his examination, in August, 1900, he was harbor master of the port of Havana. That position, he says:

"Was an official position under the Spanish government, to which I was appointed in 1897, having served as a suplente or deputy for about thirty years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially all vessels that made repairs in this port. I have inspected and valued the fishing smack Paquete Habana to be worth, on the 1st of March, 1898, $4,500 Spanish gold, basing my appraisement of said vessel upon her especial conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels made at the request of Messrs. Vilar, Senra & Co., Bengochea & Co., and filed with my declaration in the case of Antonio y Paco, and marked Exhibit A, to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the Paquete Habana, to be filed for convenience with this declaration, Exhibit A." P. 29.

The witness adds that he had no official records to keep, but that he made reports to the captain of the port in the

case of each vessel respecting her inspection, *valuation*, expense of repair, &c., and that such reports should be of record in the office of the captain of the port. P. 29. Such records, at the time of the examination of the witness, were in charge of officers of the army or navy of the United States, and must have been accessible to the government. No effort was made to dispute the testimony of the witness by reference to these records.

The certificate Exhibit A to which the witness referred was as follows:

"I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, an expert appointed by Messrs. Vilar, Cura & Co. and Bengochea & Co. to appraise the value of their respective fishing smacks, *in the condition in which they were in on the 1st day of March of this year*, do hereby certify that, owing to the constant inspection which I make of these vessels in my official capacity, the fishing smack Paquete Habana, registered folio 1,996, of twenty-eight tons burden, wooden hull, schooner rigged, rigged tight and staunch, sail and gearing complete, with necessary iron ballast, capstan, two anchors and chains, galley caboose, and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments all in good condition, I appraise in the sum of $4,500 Spanish gold" (p. 30).

The counsel for the Government suggests that this certificate, which bears date November 23, 1898 (p. 30), was issued for use in these cases, and that accordingly the valuation made by this witness should be accorded very little consideration. It may be observed, however, that the vessels had been condemned and sold at the date of this certificate, and the appeal which was taken to this

Court, had not been heard. The certificate antedated the decision of this Court, awarding restitution, by more than a year, and it was not introduced in evidence until more than two and a half years after it was issued. Moreover, though the certificate is dated November 23, 1898, it appears from the testimony of the witness and from the certificate itself, that the valuation was made on March 1st, 1898, which was prior to the outbreak of war. *Lluria,* pp. 29, 30.

The owner also intimates that the appraisal had been made prior to the capture. *Pazos,* p. 27.

Lluria states further that he made his reports in regard to his inspection *and valuation* of the vessel to the Captain of the Port (p. 29); and as the vessel had been condemned and sold at the time he granted the certificate to her owner on November 23, 1898, the fair inference from the testimony would seem to be that the appraisal itself had been made and reported to the Captain of the Port on or before March 1st, 1898, and that the certificate, which is in evidence, was subsequently granted by him, on the basis of the previous appraisal, and very probably for use on some form of petition to the Executive Department of this Government for compensation for the capture.

Gandon and Suarez testified that after the blockade was established the price of fresh fish gradually rose until at the time of the capture they were worth $10 silver per quintal (p. 31), equivalent in United States currency to about $5 per quintal (p. 56). A quintal is a weight of

100 pounds. This made the price 5 cents a pound. The vessel had on board at the time of her capture forty quintals of fish (p. 10). But, by inadvertance, the Commissioner made no allowance therefor (*Report,* p. 58). The value of these fish was $200.

The testimony of Pazos and Lluria satisfies the rule laid down in *The Ironmaster,* Swabey, 443, that the best evidence of the value of a vessel is the "opinion of competent persons who knew her shortly previous to her loss." It is a class of evidence commonly resorted to in collision cases. There can be no question of the competency of the witness Lluria, and his disinterestedness and good faith may safely be assumed from the fact that, at the time of his examination, he was an officer of the United States government, and that his deposition was taken before Mr. Joseph A. Springer, who, it is believed, was vice-consul at Havana at the outbreak of the war, and was sent again by this Government to that place after the war was ended.

The average earnings of the vessel also indicate that the valuation given by the claimants is not excessive. She earned about $75 a month, or $900 a year. *Pasos,* p. 27. This is the equivalent of 20% on the capital of $4,500 which was invested. The earnings stated are net. P. 27. The fact that part of the catch went to the crew for their services in place of wages (p. 28) does not affect the significance of these earnings as an indication of the value of the capital invested.

No effort of any kind was made to contradict or vary the testimony produced by the claimants in

Havana, until the date of the final hearing before the Commissioner at Jacksonville, a year later. Even then no evidence of any sort from Havana was offered by the libelant.

The marshal of the district, John F. Horr, was examined on the final hearing before the Commissioner. Mr. Horr was the only witness examined by the government as to the value of the Paquete Habana. P. 31. None of the witnesses examined in Key West referred to her value in any way. The Commissioner correctly held that Mr. Horr was not a qualified witness as to the value of the vessel, and that his testimony was not entitled to any substantial weight. P. 56. This witness stated that he had been interested in six or more small sailing vessels (p. 33), but did not profess to be qualified to speak of the value of smacks. He was asked:

"Q. Captain, have you kept yourself posted during your residence in Key West of the value of vessels of the character of the Quatro de Septembre? A. I wouldn't like to say that I have. She is a fishing smack, and *a class of vessel I haven't had anything to do with.*" P. 33.

With reference to the Paquete Habana he was asked:

"Q. The Paquete Habana, she is valued at $4,500 by the claimants in this case. From your present recollection of her appearance and condition, state whether or not this is excessive; and if so, what in your opinion would be a fair valuation?

> "Same objection. [The objection referred to, which is set out on page 34, was: Objected to as immaterial and irrelevant as applied to American vessels' value, and also because sufficient foundation has not been laid for the question.]

"A. The Paquete was a small sloop smack. I don't recollect about her age. I knew about her age at that time, but I don't recall now. She sold for $490. Considering her age and size, I would think $1,500 would be a fair valuation for her." P. 35.

It is submitted that the objection to this question was well founded, and that the action of the Commissioner in ultimately sustaining it (*Report*, p. 56) was proper.

On cross-examination Mr. Horr testified:

"Q. Captain, all of the values that you have given with reference to the different vessels have been values at Key West? A. Yes, sir.

Q. You don't propose, as I understand it, to speak of values in Havana? A. No, sir, I don't know anything about them other than what I have known them to pay for vessels coming over to Key West." P. 38.

He also admitted that his judgment had been guided, to some extent, by certain offers that had been made to him to build vessels in Key West, but admitted that these offers had not related to the building of fishing vessels or smacks. P. 38. Fishing vessels, he admits, cost more to build. P. 38. Moreover, his estimate of the cost of building was based on his supposition that Mr. Lowe, a witness for the Government, had built the smack Emma Lowe in Key West for $5,000. P. 37. The boat in question was of 49 tons, and had actually cost $10,000 (*Lowe*, p. 47), or about $200 a ton, instead of $90 or $100 a ton as Mr. Horr (p. 37) had supposed.

It also appeared from Mr. Horr's examination that there was no employment, and no demand, for this class of boat in Key West:

"Q. The employment of boats in this class from Key West would no longer be profitable, would it? A. No, sir; not with the laws that they had at that time.

Q. When did the change in laws to which you now refer take place? A. I think it must have been in 1897 or 1898.

Q. And about that time were [*sic*, did] all boats of that class that were then under the American flag go out of business? A. I think they did.

Q. What was the change of law? A. Well, I always supposed it was on account of an import duty put on fish over in Cuba.

Q. These changes of law you speak of were in Cuba? A. Yes, sir.

Q. When the American fishing boats of that class were engaged in the fishing business what was their principal market? A. Havana.

Q. And it was some discriminating restrictions that were imposed there that drove them out of the business? A. Yes, sir; either port duties or duties on fish.

Q. Now, Captain, it is a pretty difficult matter, is it not, to form much of an opinion of the value of a boat built some years ago, when you do not know how well she has been kept up and rebuilt and repaired? A. Yes, sir. A man who is not familiar with the boat's construction, it is pretty hard to get at her value.

Q. Some old boats when rebuilt are practically as good, are they not? A. I think so; yes, sir.

Q. Now, prior to the time that my learned friend here requested you to come in and express your opinion of these boats, have you turned these questions over in your mind since you sold them three years ago? A. No, sir.

Q. And the opinions that you have expressed were those that occurred to you at the moment of your examination, without any previous examination? A. Yes, sir." *Horr*, pp. 38, 39.

In this state of the proofs in relation to the value of the vessel and the damages suffered by the claimants in

consequence of her improper condemnation and sale at the instance of the United States, it cannot fairly be said that any error was committed which would justify the Court in reversing the decree.

If it can be considered, in any view, that the testimony of Mr. Horr was that of a qualified witness, still there are two witnesses against him, one of whom is quite as disinterested, and the Commissioner and the Court have decided against the evidence of the Government witness. In that posture of the matter the rule stated by Mr. Chief Justice Waite in *The Richmond*, 103 U. S., 540, 543, may fairly be applied:

"Two courts have already, on the same testimony, decided against The Sabine and the insurers of her cargo. As long ago as 1861 we said, speaking through Mr. Justice Grier, in the case of *The Ship Marcellus*, 1 Black, 417, 'We have had occasion to remark more than once that when both courts below have concurred in the decision of questions of fact * * * parties ought not to expect this court to reverse such a decree by raising a doubt founded on the number or credibility of witnesses. The appellant in such a case has all presumptions against him, and the burden is cast on him to prove affirmatively some mistake made by the judge below in the law or in the evidence. It will not do to show that on one theory supported by some witnesses a different decree might have been rendered, provided there be sufficient evidence to be found on the record to establish the one that was rendered.' This rule, thus stated from the preceding case was uniformly followed afterwards until the Act of February 16, 1875, * * * relieved us from the labor of weighing evidence. * * * It is true that notwithstanding this rule we were required to 're-examine the facts as well as the law of the case' (*The Baltimore*, 8 Wall., 377), but we did not reverse

except in a clear case. Such was the well-established rule of decision."

It is suggested in the brief for the Government that the decree herein should be reformed by allowing for the Paquete Habana and her catch the sum of $2,569.34, to include damages, interest and costs. The basis of this statement is a valuation of $2,000 for the vessel based on Mr. Horr's suggestion that $1,500 would be her fair value in Key West (pp. 35, 37), at a time not stated, with the addition of $500, which counsel concedes should be added to Mr. Horr's estimate in order to make the allowance for the vessel reasonably adequate. It is manifest that this is only guess-work. The circumstance that counsel for the Government is conscious of the fact that *something* must be added to Mr. Horr's estimate is conclusive against the value of the witness's testimony, and would appear to justify the action of the commissioner in disregarding it. But if an addition is to be made to Mr. Horr's figures why should it stop at the sum of $500? He conceded frankly that he knew nothing of the value of smacks in Havana, or even in Key West (pp. 33, 37, 38); and so far as the testimony of the Government in relation to this particular vessel is concerned, it would be quite as admissible to suggest the addition of $3,500, as that of $500, to Mr. Horr's estimate in order to reach a figure which would constitute adequate compensation.

3. In the case of the *Lola* the testimony as to the value of the vessel was furnished by her owner, Severo Gonzales, of Guanabacoa (pp. 22, 23), and Juan Lluria

(pp. 23, 24), the shipbuilder and harbor master who testified in the case of the Paquete Habana. Francisco Gandon and Antonio Suarez testified as to the value of the fish. Pp. 25, 26.

Gonzales testified that the value of the vessel at the time of her capture was $5,000. He admits that he had obtained the vessel originally at a low price, but that after her purchase she had been careened at the Zaldo shipyard and extensive repairs made on her. The name of the person who effected the repairs is stated. The repairs were paid for in gold for all the daily labor expended and for materials, "and after everything had been paid for the vessel was appraised in $5,000." Pp. 22, 23.

Juan Lluria, whose qualifications have been previously stated, says: "I have inspected and valued the Spanish fishing smack Lola to be worth, on March 1, 1898, $5,000 Spanish gold, basing my appraisement of said vessel upon her special conditions, and my constant inspection of vessels of her class." He appends his certificate to that effect. *Lluria,* pp. 23, 24. The certificate further shows that the body, rigging, tackle, apparel and furniture of the vessel were all complete and in good condition. P. 24.

Fresh fish were testified to have been worth in Havana at the time of the capture $10 per quintal Spanish silver, equivalent to $5 gold for 100 pounds. Shipments of fresh fish were made to Havana throughout the war, from Batabano, a port on the south shore of the Island which does not appear to have been closed by our naval or military operations. Pp. 25, 26.

The only witnesses examined by the government in this case were Mr. Horr, the marshal, and Milton Curry. Mr. Horr, whose evidence was received subject to the claimant's objection that he was not a competent witness as to the value of the vessel (p. 30), expressed no opinion as to her actual value, but stated that he considered $5,000 to be excessive, because in his opinion such a vessel could have been built in Key West for considerably less money. P. 31. He stated, however, that he had had no experience in building or selling vessels of this character. Pp. 27, 32. He had heard that they could be built for $90 per ton, p. 34. It is an odd fact that the only proof in the case of the actual cost of building fishing vessels in Key West was given by another government witness, who had built two boats similar to the Antonio Suarez, a vessel of 49 tons, and they had cost about $10,000 apiece. *Lowe*, p. 42. This is at the rate of over $200 per ton.

The Commissioner rightly considered that Mr. Horr's opinion as to the value of the vessel was not that of a qualified witness. *Report*, p. 52. Moreover, it did not appear that Mr. Horr was speaking of the value in Cuba, or of the time of the capture.

Milton Curry, a merchant of Key West, who had never bought or sold sailing vessels (p. 39), and had had no experience with fishing smacks (p. 40) except that he had purchased the Lola and the Severita at the marshal's sale (p. 39), testified that his firm had bought the vessels for what he considered "fair prices to pay for them on specu-

lation." P. 40. He did not profess to have any knowledge of their value. He expected that under the change of government in Cuba the fishing business would be revived so as to permit American vessels to sell fish in Havana. He paid $800 for the Lola at the marshal's sale (p. 39), and subsequently sold her, after she had been wrecked at Tortugas and repaired, for the sum of $1,800. P. 40. It does not appear where, when, or to whom he sold her. There is nothing in the testimony to show what ultimately became of the vessel.

On this state of the proofs it is manifest that there is no merit in the contention that the Commissioner's report was contrary to the evidence, or was not supported by it. The observations that have been made with reference to the Report in the case of the Paquete Habana (*ante*, p. 23) apply with even greater force to his decision with reference to this vessel.

Counsel for the Government suggests in his brief that the decree in the case of the Lola should be modified by reducing the award for damages, interests and costs to the sum of $2,046.40. The basis of the computation which leads to these figures is the valuation of the vessel at the sum of $1,800, the price for which she was re-sold by Mr. Curry, who purchased her at the sale under condemnation proceedings. Pp. 39, 40.

It is submitted that there is no ground whatever for resting the valuation of this vessel on the price for which she was re-sold. Mr. Curry admits that between the time

he bought her and the time of her sale, she "was wrecked at Tortugas" (p. 40) and that the sale occurred after he had put "some repairs" on her. There is no statement of the extent of her injuries at Tortugas, nor as to whether she was fully repaired or not. He does not say that she was sold in Cuba at all, nor when, where nor to whom she was sold. Obviously the price for which Mr. Curry resold the boat under conditions not shown, is not a proper basis for the computation of the claimant's damages.

It is not understood why the Government offers less in the way of compensation for this vessel, than it offers for the Paquete Habana. According to its contention, the Paquete Habana was at least five years older than the Lola, and seven tons smaller, and there is no proof of any difference in condition that would justify an unfavorable discrimination against the Lola. Attention is called to this discrepancy merely for the purpose of emphasizing the danger of guessing at the damages, instead of measuring them by the proofs.

4. It may be doubted whether there is any proper foundation in the record for the First and Second Assignments of Error, under which it is argued that the Court erred in sustaining the report of the Commissioner as to the amount of the damages.

The only exceptions that were taken to the Commissioner's report, on that point, are the first and second, which were: *first,* "that the amount allowed as compensatory damages for the following vessels and each of them is excessive and not sustained by the evidence" [enumer-

ating among others the Paquete Habana and the Lola]; and, *second*, "that the value of each of said vessels, to wit, * * * Paquete Habana, Lola * * as ascertained by the Commissioner, is contrary to the evidence." *Paquete Habana Rec.*, p. 59; *Lola Rec.*, p. 54.

No suggestion was presented in the court below, either to the commissioner or to the court, as to the amount which the United States attorney thought the evidence would justify as an allowance for compensatory damages.

In *The Commander in Chief*, 1 Wall., 43, 50, the court held that exceptions to a commissioner's report, which were expressed in almost identical terms, were insufficient, and were not entitled to any consideration on appeal from the final decree. The exceptions there were that the commissioner "had no evidence to justify his report;" that the commissioner "reported more than the evidence warranted;" and "that the evidence showed the vessel to be of far less value than the report made it." P. 46. Mr. Justice Clifford, speaking for the court (p. 50), said:

"None of the exceptions to the report of the commissioner are entitled to any consideration" [except one which related to a different matter]. It was distinctly held that the exceptions above quoted were entirely insufficient.

In this Court, for the first time, counsel for the Government states the amounts which it is conceded should be recovered in these cases. The ground of the decision in *The Commander in Chief* appears to be that statements of that kind should have accompanied the exceptions

to the commissioner's report, and that attention should have been drawn to the testimony on which the Government claimed that the damages should be limited to those amounts. In that manner the contention of the Government would have been properly presented for consideration by the commissioner and for review by the court below, and this Court, in considering the matter on appeal, would have had the benefit of the decision of the court below on the real points in controversy.

5. The objections made by the Government to certain items of the amounts awarded for the vessels and for the catch remain to be considered.

It is somewhat difficult to analyze these objections, for the reason that they are not stated categorically or directed specifically to the reports in the individual cases. They appear, however, to come down finally to the single contention that the damages awarded are too large, and to involve only the question of the weight that should be given to the testimony produced by the different parties.

The Government appears to concede that the amounts which the vessels sold for in Key West on condemnation are not to be taken as evidence of their values, and that the absence of any demand for vessels of that class in Key West, and the inability of the boats to engage in fishing from that place, because there is no market there for the fish, deprive the estimates of witnesses as to the value of the property in Key West of the weight they might otherwise possess.

It is contended, however, that the amounts for which

some of the vessels were re-sold in Havana should be taken as controlling, or, at least, as evidence of the Cuban value, which may be regarded as in conflict with the testimony produced from Havana by the claimants. The argument from this premise appear to be that the decrees may be modified by reason of this assumed conflict in the proofs.

This, it is seen, raises merely a question as to the weight of the evidence. But, as the libelant's testimony does not show when, nor under what circumstances, nor to whom, the vessels were re-sold, nor even, in these two cases, that they were re-sold in Cuba, it would seem that the market price on re-sale could not fairly be received as evidence of the value of the boats at the time of the capture. Without such evidence there is nothing in the case which bears on the value of the vessels at that time except that on which the Commissioner rested his decision. In a sense, therefore, it may properly be said that the report of the Commissioner is in accordance with the undisputed testimony as to the value of the vessels and their catch at the time of their capture,—the only point he was called on to determine.

Some of the comments made by the counsel for the government on the claimants' testimony are scarcely justified by the facts. There is, *ex. gr.*, nothing whatever in the evidence to justify the intimation that the witness Lluria is not a credible and disinterested witness. His qualifications as a shipwright and shipbuilder are not challenged, nor is it denied that, as harbor-master, it was his duty to inspect and value vessels of this class, and report the results of his surveys and valuations to the

captain of the port, as he says that he did. He had been deputy harbor-master for many years under the Spanish *regime*, and at the time of his examination he occupied the office of chief harbor-master by the leave and authority of this Government. It is possible that he was a friend and neighbor of these claimants, but the record does not show it; and if the fact were conceded, it need not detract from the value of his testimony. No doubt Mr. Horr, the United States marshal, who testified for the Government, was a friend of the United States attorney; but the objections to his testimony do not rest on that ground. The United States attorney had a year and a half, after the return of the commission, to investigate the correctness of the facts set forth in Lluria's deposition, and during most of if not all the time the Government had a legal representative in Havana. The only inference that can fairly be drawn from these circumstances would appear to be that further evidence from Cuba, as to the value of the vessels, at the time of their capture, would not have been more favorable to the government than that which was produced by the claimants. The evidence of the owners is, of course, interested, but its verity appears to be established in each case by the corroborative evidence of a disinterested witness.

Speaking generally of the evidence of Mr. Horr and of the depositions of the government's witnesses examined in Key West, it may be said that those witnesses have not assumed to possess any knowledge of the value of fishing-vessel property in Havana, nor, with the exceptions of Mr.

Lowe and Mr. Cash, of the value of such property in Key West. The Commissioner, who was no doubt acquainted with all these witnesses, specifically found that none of the others was an expert on the value of smacks. *Paquete Habana Rec.*, p. 57. Neither Mr. Lowe nor Mr. Cash testified about the *Paquete Habana* or the *Lola*.

The Solicitor-General is in error in stating that the Key West witnesses had traded in vessels of this class for years. None of them except Cash and Lowe professed to have been interested or experienced in fishing vessel property, or to have been engaged in buying or selling boats of that class prior to these captures. *Horr, Paquete Habana Rec.*, p. 33; *Cates*, p. 42; *Curry*, p. 46; *Atchison*, p. 50; *Reedy*, p. 50; *W. Curry*, pp. 52, 53. They all concede that there was no demand or employment for such vessels in Key West, and that such a boat there was worth only what it could be sold for in Cuba. *Horr*, p. 38; *Cates*, p. 42; *Cash*, p. 44; *Curry*, p. 45; *Lowe*, p. 47; *Atchison*, pp. 49, 50; *Reedy*, p. 51; *W. Curry*, p. 53.

Mr. Horr, who intimated, with some reluctance, that there was not a great deal of difference in the cost of building small sailing vessels of the ordinary class and fishing smacks (*Paquete Habana Rec.*, p. 33), is shown to be entirely mistaken by the testimony of Mr. Lowe. Mr. Horr says that he had had offers to build vessels of the general class of these smacks at $90 a ton. P. 34. Mr. Lowe says that he had built, in Key West, two smacks of 49 tons measurement, each of which cost him about $10,000. P. 47. This is at the rate of more than $200 a ton. On Mr. Horr's figures these boats should have cost

only $4,410 apiece. This of itself shows the unreliability of Mr. Horr's valuations.

It is obvious to a layman that the building of a fishing boat, with large interior tanks, necessarily involves quite different principles of construction, bracing and strengthening; and that the buoyancy sacrificed in the construction of tanks connecting with the sea must be compensated for in other ways which can hardly fail to entail much additional expense.

All the witnesses agree, and it is not denied by the government, that the condition of the vessels was good. Some stress is laid, however, on the circumstance that some of the vessels were fifteen or more years old, and the suggestion is made that, by reason of their age, depreciation in the condition and value of the vessels should be presumed. This suggestion, however, is not supported by the proofs. Mr. Horr concedes that no reliable opinion can be formed of the value of an old boat without taking into account her actual condition, and without knowing how well she has been maintained, repaired and rebuilt, and that some old boats when rebuilt are practically as good as new. *Paquete Habana Rec.*, p. 39. Atchison admits that the value depends altogether on the vessel's condition. P. 48. The deputy marshal who had the boats in his custody says all were in generally good condition except one [not named] (p. 50), and the evidence of the other witnesses is to the same effect. The testimony of the claimants also establishes the fact that the vessels had been kept in repair, and were in good condi-

tion when captured. *Paquete Habana Rec.*, pp. 27, 29, 30; *Lola Rec.*, pp. 22, 23, 24.

The values ascertained by the Commissioner are, therefore, to be taken as the values of sound vessels in good condition.

Speaking generally, in reference to all the cases, it may be said that the prices for which some of the vessels were subsequently re-sold in Havana do not afford a fair criterion for estimating their value. The value which is to be made good to the claimants, is the value at the time and place of the capture. *Bates* v. *Clark*, 95 U. S., 204, 210. In a collision case the value would be taken as of the time of the loss, and, in case of a foreign vessel the damages ascertained and awarded would be the value in the home of the ship. The prices obtained for the vessels which were re-sold in Cuba are not shown to have any near relation to the values for which compensation is to be made. Neither the time nor the circumstances of the re-sales are stated. The speculators who bought the boats in Key West expected that the restrictions on the marketing of fish in Havana would be removed, after the war, and it is clear that they held the boats until it was definitely learned that no change was to be made in the laws on that subject. Mr. Curry says that he sold the two boats that he purchased [the Poder de Dios and the Antonio y Paco] "a few months after the purchase of them." P. 53. Beyond this there is nothing in the records showing when or to whom the vessels were sold, with the single exception of

the Espana. Mr. Cates states that he sold this vessel, at a time not stated, to her former owner. *Paquete Habana Rec.*, p. 42. He does not mention the name of his vendee, nor does it appear that he had any knowledge of the actual ownership of the vessel at the time of the capture. The time and circumstances of the sale would necessarily be of importance in determining whether the prices realized on re-sale afforded a fair criterion of their value when captured.

Little weight can be ascribed to the general testimony cited by the Government from the deposition of Deputy Marshal Atchison that all the vessels were sold back to the people in Havana. *Paquete Habana Rec.*, p. 50. He personally sold only one vessel in Havana, the Santiago Apostal. *Id.*, pp. 48, 50. It appears from the testimony of other Government witnesses that all the remaining vessels were sold by the persons who had bought them, and that Atchison was not connected with the purchase or re-sale of any of them. His statement, therefore, except as it applies to the Santiago Apostal, is manifestly hearsay, and may mean no more than that the vessels were resold on some form of speculation similar to that on which they were purchased in Key West, and that he assumed they were destined for Havana. At all events, Atchison makes no suggestion that any of the vessels were re-sold to any of their original owners. The only direct proof as to the re-sale of the vessels in Havana is that of Cates, referring to the Espana (*Paquete Habana Rec.*, pp. 40, 42), and Lowe, who re-sold the Engracia and the Cuatro de Setiembre (p. 47) to parties in Havana. Lowe refers to

all the vessels being sold "to a party all near the same time." *Paquete Habana Rec.*, p. 47. His evidence is somewhat vague. It does not state that the other vessels were sold in Havana. His testimony is susceptible of the inference that the vessels may have been sold singly or together either in Key West or Cuba, on a speculative basis, in the expectation that they would be re-sold to Cubans, who alone, apparently, could employ them with profit.

There appears to be no just ground, therefore, for the statement in the Government's brief that most of the vessels were *presumably* sold to their former owners. But, if it had been proved to be a fact that the vessels some months after the war had been re-purchased by their former owners, it would be an ironical application of the rule of compensation to take such prices as the measure of the claimants' damages. After enduring the hardships of war and seige, and having their fortunes depleted and their means of livelihood taken away by the seizure and condemnation of their vessels, it will hardly be presumed that the money which they may have been able to raise for the re-purchase of vessels at some later time afforded any just measure of the value of the vessels when captured. The sellers of the vessels had no use for them, and had bought them at prices which enabled them to make large profits on their investments on sales at figures which represented less than a quarter of the cost of building. The situation, then, was that the new owners were ready to sell cheap, and the former owners, presumably, would not

have been in a position to re-purchase except for beggarly prices. Bargains arrived at under such conditions, if any were in fact made, would naturally be at minimum prices, which may well have had little or no relation to the values of the vessels when captured.

If the vessels had in fact been re-sold to their owners, and it was intended to rely on those prices as the measure of the damages to be recovered, it may fairly be presumed that the claimants would have been interrogated on that subject, on their examination under the commission.

The conclusive answer to this suggestion, however, would appear to be that it was not raised in the court below. The contention was not presented to the Commissioner, nor was any exception taken to his report, on the ground that he did not adopt the rule of damages for which the Government now contends. *Paquete Habana Rec.*, pp. 59, 60. Nor is there any assignment of error to the principle on which the Commissioner and the Court below undertook to assess the damages. *Paquete Habana Rec.*, p. 66. The only error suggested is that the evidence did not sustain the conclusions of the Court below under the principle of decision that was adopted.

This discussion, however, appears to be wholly academic. There is no competent proof that any of the boats (with the possible exception of the Espana) were re-sold to their former owners; and as such a rule of damages would not afford indemnity for the loss of use or possibly of the chance of sale of the vessels on the

valuations then current, or restore the owners to the position they would have occupied if the boats had not been captured, it would not afford the compensation to which the claimants are entitled.

With reference to the two vessels here involved, *The Paquete Habana* and *The Lola*, the evidence does not show when, where or to whom they were sold. There is no room, therefore, for even a surmise that they may have been re-sold to their former owners.

It is also suggested that considerations of public policy should deter the Court from awarding to persons who, at the time of the capture, were enemies, the enhanced values which the vessels and catch may have had by reason of our military and naval operations; and that damages should be awarded on the basis of the assumed values of the property in times of peace.

With reference to this point it may be said that, if the claimants were technically enemies, the Court has already determined that their property was entitled to exemption from capture. In awarding compensation, therefore, the property is to be dealt with in the same manner as the property of friends. If its value was enhanced by reason of the war, that fact would not be material in measuring the damages except as showing the values current at the time when the right to compensation accrued. The right to compensation has been determined, and the damages are to be measured by the value of the property at the

time of the capture, with interest and costs. If that value was enhanced by the military or naval operations of our government, the claimants are, nevertheless, entitled to be paid at the enhanced amounts; for they represented the value which the property would have possessed, and at which, presumably, it could have been disposed of, but for the unlawful capture and condemnation.

These observations apply alike to the valuations of the vessels, and to the current price for the fish, at the time of the capture, as to which there is no dispute.

It may be observed, however, that the valuations given for the vessels are given as of March 1st, 1898, nearly two months before war was declared. *Lluria, Paquete Habana Rec.*, p. 30.

The rule quoted from *The Apollon*, 9 Wheat., 362, and relied on by the Government, can have no proper application, it is submitted, to the circumstances of these cases. The statement quoted from that case relates to vessels of general utility in commerce, and to the sales of cargoes in places where, presumptively, there would be a fair market for them. In these cases the circumstances are altogether peculiar, and different. It is conceded by all parties and by the witnesses that the vessels possessed nothing but a speculative value in Key West. The Island and its population are both very small and are distant 180 miles from the nearest place of commercial importance in Florida, and about 85 miles from Havana. The vessels by reason of their construc-

tion, were unsuited for any business save fishing, and the vessels could not be profitably employed in that business from Key West. Whether they could have been employed profitably along the northern coast of the Atlantic does not appear, but there is no suggestion in the proofs that persons engaged in the northern fisheries took the slightest interest in the boats. Under these circumstances the only reasonable basis for the award of damages, it is submitted, is the value which these vessels possessed, as Cuban craft, and such value can only be determined with reasonable certainty on the evidence which has been produced by the claimant, from Cuba.

Comment is made on the allowance of interest, and the rate at which it is allowed. No question on that subject, however, is properly before the court. There was no exception to the report of the commissioner as to the rate of interest, or as to the propriety of allowing it. Nor is there any assignment of error to the final decrees on this subject. Without any exception or assignment of error on the subject, no question relating to interest appears to be before the court. *The Commander in Chief,* 1 Wall., 43.

It may be observed, however, that interest has always been allowed in cases of this class, not only against private captors, but against the United States. *The Apollon,* 9 Wheat., 362, 376, 379, 380; *The Charming Betsy,* 2 Cranch, 64, 125; *The Anna Maria,* 2 Wheat., 327; *The Amiable Nancy,* 3 Wheat., 546, 562, 563; *The Nuestra Senora De Regla,* 108 U. S., 92, 104; *The Labuan, Appen-*

dix, post, p. ; *The Glen, Appendix, post*, p. ; *The Sybil, Appendix*, post, p. .

The allowance of interest, in these cases, was within the fair scope of the mandates, as a part of the "compensatory damages" to be recovered.

The rate allowed was the legal rate prevailing in the district in which the decrees were entered, and is in accordance with the practice sanctioned by this Court. Thus in *Texas & Pacific Ry. Co.* v. *Anderson*, 149 U. S., 237, 242, Mr. Chief Justice Fuller said:

"This Court awarded execution against the Company for the costs here, but it was for the Circuit Court to award execution for the amount of the judgment as it was directed to do, and as it did, and *interest was properly included at the rate which obtained under the law of Texas at the time the judgment was rendered.*" See also *Huey* v. *Macon Co.*, 35 Fed., 431; 1 *Sedgwick on Damages*, 8th Ed., §339.

It would seem that there can be no presumption that the rate of interest in Cuba, during or immediately following the war, when financial conditions were, notoriously, in an extremely unsettled condition, was less than the legal rate prevailing in the district in which the final decrees in these cases were entered.

The objection on the score of costs is quite unfounded. No costs have been awarded to the claimants; though the mandates directed that costs should be recovered. By an inadvertence the final decrees contain the statement that the claimants are to recover the "sum of $25 costs."

Paquete Habana Rec., p. 65; *Lola Rec.*, p. 60. It appears, however, that the $25 in question was the Commissioner's charge for his services on the reference (*Paquete Habana Rec.*, p. 59), which was specifically allowed *to him*, in the order confirming the report. *Id.*, p. 63. In fact, costs were not asked for by the claimants. There is no exception or assignment of error on this subject.

The claimants submit, in conclusion, that the cases are not of such a nature that awards should be given sparingly or with a grudging hand. If only a single case were before the Court, it would not, probably, be contended that the damages were unduly large. The complaint appears to be rather that the aggregate of the damages in twelve cases seems large. Whether the damages are large or not, must depend, finally, in each case, on the proofs, and on the legal principles to be applied in its determination. But it may be observed that the damages, such as they are, will go to a large number of people, none of whom had a large amount invested, or would receive a large sum as his share of the compensation; while it is perfectly manifest that the loss of use of the vessels, and the expenses and costs incident to the protracted litigation, into which the claimants, by no fault of their own, have been involved, must necessarily leave them, at the finish, without full compensation for their losses.

SECOND POINT.

THE DISTRICT JUDGE COMMITTED NO ERROR IN DECIDING THAT THE COMPENSATORY DAMAGES AWARDED TO THE CLAIMANTS UNDER THE MANDATE OF THIS COURT WERE PAYABLE BY THE UNITED STATES.

1. It appears to have been determined by the previous decision of the court that the compensatory damages awarded are to be paid by the United States.

It would seem that the only parties to these causes are the United States on the one hand, and the claimants of the vessels on the other.

Section 4618 of the Revised Statutes provides that "upon receiving the report of the Prize Master directed by the preceding section, the attorney of the United States for the District shall immediately file a libel against such prize property, and shall forthwith obtain a warrant from the court directing the Marshal to take it into his custody, and shall proceed diligently to obtain a condemnation and distribution thereof." Section 4630 provides that "the net proceeds of all property condemned as prize shall, when the prize was of superior or equal force to the vessel or vessels making the capture, be decreed to the captors; and when of inferior force, one-half shall be decreed to the United States and the other half to the captors."

In pursuance of these provisions libels were filed by

the United States, through its attorney for the Southern District of Florida, in both cases, and in the original decrees it was "ordered, adjudged and decreed that the said sloop Paquete [Lola] and cargo are condemned and forfeited *to the United States* as lawful prize of war." *Paquete Rec.*, pp. 1, 11, 14; *Lola Rec.*, pp. 1, 11.

Subsequently, and on June 15, 1898, Lieutenant W. V. Bronough, watch officer of the U. S. S. Castine, Lieutenant Henry Morrell, navigating officer of the same vessel, Commander B. F. Tilley of the U. S. S. Newport, and Lieutenant J. H. Bull, executive officer of that vessel, filed their depositions in the case of the Paquete Habana, claiming a part of the prize money. *Rec.*, pp. 16-19.

The record does not show any claim on behalf of the naval officers to participation in the proceeds of the Lola.

Any intervention of this character, however, is permissible only after final decree of condemnation, and is authorized only for the purpose of enabling the court to make distribution of the proceeds of the prize. R. S., §§ 4634, 4631. It seems doubtful, to say the least, that claims to distributive shares of that portion of the prize money which, under the statutes, falls to the captors, make the officers who present the claims parties to the cause.

The parties who were before this court on the previous appeal were, therefore, the claimants of the vessels on one side, and the United States on the other. As between those parties the court, speaking by Mr. Justice Gray, 175 U. S., 677, 714, said:

"Upon the facts proved in either case it is the duty of this court, sitting as the highest prize court of the United States, and administering the law of nations, to declare and adjudge that the capture was unlawful and without probable cause: and it is, therefore, in each case ordered that the decree of the District Court be reversed and the proceeds of the sale of the vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with damages and costs."

On a subsequent day the court said (175 U. S., at p. 721):

"The court in each case, on motion of the Solicitor-General in behalf of the United States, and after argument of counsel thereon, and to secure the carrying out of the opinion and decree of this court according to their true meaning and intent, ordered that the decree be so modified as to direct that the damages to be allowed shall be compensatory only and not punitive."

This is the judgment of the court between the only parties who were before it. The plain effect of the decision appears to be that the court determined that the compensatory damages to be recovered by the claimants were to be paid by the United States.

If such is the effect of the previous decision any further discussion of this point is needless; for any matter that was determined on the previous appeal must be taken as final and conclusive throughout the subsequent stages of the litigation.

In the *Nuestra Senora De Regla,* 108 U. S., 92, at p. 100, Mr. Chief Justice Waite said:

"That the steamer was not lawful prize or the subject of capture was expressly decided on the former appeal.

It was also impliedly said that the capture was without probable cause, for, it was said, the owner was undoubtedly entitled to a fair indemnity for the losses sustained, the only difficulty being as to the amount. These questions, are, therefore, no longer open."

In support of that conclusion the court cited *Clark* v. *Keith,* 106 U. S., 464, and *Supervisors* v. *Kennicott,* 94 U. S., 499; to which may be added *The Lady Pike,* 96 U. S., 461.

In this connection it should be mentioned that no application was made by the United States to amend the judgment or mandate of the court so as to provide, if it had been competent to do so, that the judgment should be against the captors, as well as the United States, or against the captors alone. In the absence of such an amendment it would seem that the District Court was without power or authority to enter any decree, except a decree against the libelant of record. *In Re Potts,* 166 U. S., 263, 265, 267-268.

2. If it be considered that the mandate issued in pursuance of the previous decision of the court did not direct the District Court to enter its decree against the United States, the sole party libelant, and that it was competent for the court below, in executing the mandate, to enter a decree against the captors alone, or against the United States and the captors jointly, the court was, nevertheless, justified in entering the decrees against the United States as was done.

It is the settled practice in prize cases, where restitution

is ordered with damages, to assess and award the damages in the original cause against the libelants therein.

This was done without question in cases that arose prior to 1861. *The Charming Betsy,* 2 Cranch, 64; *The Amiable Nancy,* 3 Wheat., 354; *The Apollon,* 9 Wheat., 362. The rule was recognized by Congress in the Act concerning Letters of Marque, Prizes and Prize Goods, passed June 26, 1812. 2 *Stat. at Large,* pp. 759, 761.

Since the enactment of the Prize Acts of August 6, 1861 (12 Stat., p. 319), March 3, 1863 (12 Stat., p. 759), and June 23, 1864 (Rev. Stat., §§ 4613, 4652), it has been the practice to file all libels in prize causes in the name of the United States. No case has been found in which the United States appears as libelant and damages for unlawful capture have been awarded against the naval captors. On the contrary the practice, since 1861, has been to award the damages against the United States alone, or, in cases where the captors have intervened before condemnation and asked to be made co-libelants, against the United States and the naval captors jointly. *The Labuan,* Betts, J. (1862), Blatchford's Prize Cases, 165; petition of intervention by naval captors printed in Appendix, *post,* p. 65, and final decree entered by Benedict, J., in 1868, printed in Appendix, *post,* p. 67; *The Glen,* Betts, J. (1863), Blatchford's Prize Cases, 375; final decree printed in Appendix, *post,* p. 72; *The Sybil,* Betts, J. (1864), Blatchford's Prize Cases, 615; final decree entered by Blatchford, J., in 1868, printed in Appendix, *post,* p. 74; *The Nuestra Senora De Regla,* 108 U. S., 92; *The*

Teresita [Docket title, *The United States, Libt. and Apt.* v. *The Barque Teresita*], 5 Wall., 180, 182.

In *The Teresita, supra,* it appears from the record that the United States was sole libelant. The court below ordered restitution with costs and expenses to the claimants. The original record on file will probably show that the decree was in form as well as in substance against the United States. In the opinion of this court there was some discussion of the question of probable cause and of the further proofs which had been produced in behalf of the captors. The word "captors," as used in the opinion, evidently referred to the United States. In the *Neuestra Senora De Regla,* 108 U. S., 92, 101, the court said that the word "captors" in a libel by the United States, referred to the United States. When, therefore, the court in the *Teresita* said, "The decree of restitution must be affirmed and we shall direct the costs and expenses to be paid by the captors," it meant, apparently, that the costs and expenses were to be paid by the United States.

In *The Isabella Thompson,* 3 Wall., 155, restitution had been ordered by the court below. The captors appealed on the ground that the decree should have provided for the payment of costs and expenses to the claimants. The opinion is taken up entirely with a discussion of the question as to whether or not there was probable cause for the capture and it ends with the statement: "The District Court committed no error in refusing to give the claimants damages and costs as against the United States or the captors." There is, however, no intimation in the

opinion that the claim for expenses and costs as against the United States would have been untenable, on other grounds, if the absence of probable cause had been established.

§ 4640 R. S. appears to recognize the liability of the United States in prize cases where restitution is decreed. It provides:

"When the cause is finally disposed of, the Court shall make its order or orders on the Assistant Treasurer to pay the costs and charges allowed and unpaid; *and in case the final decree shall be for restitution,* or in case there shall be no money subject to the order of the Court in the cause, *any costs or charges allowed by the Court, and not paid by the claimants, shall be a charge upon and be paid out of the fund for defraying the expenses of suits in which the United States is a party or interested.*"

It is true that the general statutes contain no provisions for enforcing payment of judgments for damages against the United States for unlawful capture without probable cause. This matter was referred to in *The Nuestra Senora De Regla,* 108 U. S., 92, 103, where the Chief Justice said:

"It is true any judgment that may be rendered cannot be judicially enforced, but the questions to be settled are judicial in their character, and are incidents to the suit which the United States were required to bring to enforce their rights as captors. It is too late now to insist that the case is not one of prize, because in the libel it is expressly alleged that the vessel was captured as lawful prize, and condemnation was asked on that account. When, therefore, the United States, through the executive of the nation, waived their right to exemption from suit, and asked the prize court to complete the adjudication of

a cause which was rightfully begun in that jurisdiction, we think the Government is bound by the submission, and that it is the duty of the court to proceed to the final determination of all the questions legitimately involved."

Judgments for damages in such cases may be paid as provided in § 4640 R. S., or in the same manner as those which are recovered in the Court of Claims,—that is, by appropriations of money voted by the Congress. The only difference appears to be that decrees in prize cases have in many cases been paid by special, instead of by general acts. *Appendix, post,* pp. 71, 73, 77.

3. The United States, by entering the forum as an actor, and prosecuting to condemnation, for its own and its agents' joint use, the vessels whose unlawful capture it had ratified and confirmed, has submitted itself voluntarily to the jurisdiction of the Court, and is bound, under the universal practice in prize causes, to compensate the claimants for their loss.

It is to be observed that these are not actions of tort against the United States. They are in substance and effect mere claims for the restitution of property which the Government has unlawfully taken from private individuals. The principle involved is that property which one has wrongfully taken shall be returned, or if, by the procurement of the wrongdoer, the property cannot be returned in specie, its value should be returned.

If the Government had taken the vessels and applied them to its own use, instead of procuring them to be con-

demned and sold, without legal right, there could be no question that it would be bound to return the boats, or their value. *United States* v. *Russell,* 13 Wall., 623; *Clark* v. *United States,* 95 U. S., 539. It may be that this is the principle which underlies the decision in the *Nuestra Senora de Regla,* 108 U. S., 92. Nor could there be any question of the right of the Prize Court to order the United States to restore the vessels, if they still remained in specie and were subject to its control.

It would appear to be an extreme refinement of principle which would deprive the Court of jurisdiction to determine that the United States should refund the value of the property unlawfully taken, simply because it is now beyond the power of the Government, solely in consequence of its own action, to return the vessels themselves.

No claims are made against the Government, beyond the value of the property against which it proceeded and which it caused to be condemned. They are, in substance, merely claims for restitution. Properly speaking, they are not affirmative demands against the Government for damages arising *ex delicto.* For this reason, the authorities cited by the Solicitor General, in which the immunity of the United States from tort actions is asserted, appear to have no real application to these controversies.

The Court, in previous decisions, has recognized the liability of the Government to the extent of the value of the property involved, where it has voluntarily submitted

itself to the jurisdiction of the Court as a plaintiff against such property.

In *The Siren,* 7 Wall., 152, 154, Mr. Justice Field, speaking for the Court, said:

"When the United States institute a suit, they waive their exemption so far as to allow a presentation by the defendant of set-offs, legal and equitable, to the extent of the demand made or property claimed, and *when they proceed in rem,* they open to consideration all claims and equities in regard to the property libelled. They then stand in such proceedings, with reference to the rights of defendants or claimants, precisely as private suitors, except that they are exempt from costs and from affirmative relief against them, *beyond the demand or property in controversy.* * * * (p. 159). Such decree of sale could only be made upon application of the government, and by its appearance in court, as we have already said, it waives its exemption and submits to the application of the same principles by which justice is administered between private citizens."

The Court here clearly recognizes the liability of the United States to the extent of "the demand or property in controversy."

In *Carr* v. *The United States,* 98 U. S., 436, 438, Mr. Justice Matthews said:

"The cases like that of the Siren and the Davis, already referred to, and many others therein cited, in which the proceeds of government property, incidentally brought into the admiralty, have been subjected to the liens of claimants against the same, stand upon the principle that when the government itself seeks its rights at the hands of the court, equity requires that the rights of

other parties interested in the subject matter should be protected."

Mr. Justice Miller in *Case* v. *Terell,* 11 Wall., 199, 201, and Mr. Justice Gray in *United States* v. *Lee,* 106 U. S., 196, 248, asserted the principle upon which *The Siren* and *The Davis* were based to be that "the government came into court of its own volition to assert its claim to the property, and could only do so on condition of recognizing the superior rights of others."

In *Clark* v. *Barnard,* 108 U. S., 436, 448, Mr. Justice Matthews said:

"In the present case, the State of Rhode Island appeared in the cause and presented and prosecuted a claim to the fund in controversy, and thereby made itself a party to the litigation to the full extent required for its complete determination. It became an actor as well as defendant, as by its intervention the proceeding became one in the nature of an interpleader, in which it became necessary to adjudicate the adverse rights of the State and the appellees to the fund, to which both claimed title."

In *Cunningham* v. *R. R. Co.,* 109 U. S., 446, 452, Mr. Justice Miller said:

"And the State, if it choose to come in as plaintiff, *as in prize cases,* or to intervene in other cases when she may have a lien or other claim on the property, will be permitted to do so, but subject to the rule that her rights will receive the same consideration as any other party interested in the matter, *and be subjected in like manner to the judgment of the court.*"

The case of the *Nuestra Senora de Regla,* 17 Wall., 29; 108 U. S., 92, was decided on peculiar facts, but, in the

result, it acknowledged and adjudged the liability of the United States to make compensation to the claimants on a finding that the capture had been made without probable cause.

The Nuestra Senora de Regla was a side-wheel ferry-boat of light draft, which had been built in New York for Spanish owners, and was intended to be operated on the Regla Ferry in Havana Harbor. On her way down the coast in November, 1861, she came to the blockading fleet, which was then operating off Port Royal, S. C., and received the permission of the Admiral in command to pass the blockade and enter the port. On her arrival there, Gen. Sherman who was in command of the United States forces, perceived that "she is just the thing we want, and admirably adapted for these waters and our purpose" (108 U. S., at p. 93), and thereupon, on the refusal of the master to sell the vessel to the Quartermaster of the United States at that port, he ordered that she be seized. No judicial proceedings were instituted for her condemnation at the time, though she was detained, and in December, 1861, a charter party was entered into between the Chief Quartermaster and the master of the vessel, without prejudice to the claim of the Government that she was subject to condemnation, under which the boat was to be employed at the rate of $200 a day until the contract should be cancelled. In January, 1862, she was, in form, delivered to the Flag Officer of the Navy in command at that station, by whom she was kept in service until about March 1, 1862, when she was sent to New York, and libeled by the

United States "in behalf of themselves and of the Naval captors in interest" (p. 94). In August, 1862, Judge Betts ordered that the vessel be delivered by the Marshal to the Navy Department, at a valuation to be determined by an appraisement, and this was done. In June, 1863, a decree of restoration was entered, but the vessel never was restored. In October, 1863, it was ordered "that further proceedings in the litigation be stayed, on the consent of counsel, to the end that all questions of damages reserved in the decision of the Court in the term of June last, may be considered and adjusted by the Government of the United States on the application and with the concurrence of the Government of Spain." No adjustment was arrived at between the two Governments, and on May 27, 1870, Mr. J. C. Bancroft Davis, Acting Secretary of State, brought the correspondence to an end by advising the Spanish Minister in Washington, "that it will be more satisfactory to the Government that the parties interested should apply to the Court, which *still retains its jurisdiction of this case*, to obtain such further relief as justice may demand, and in the mode which that tribunal shall deem most proper and convenient." 108 U. S., 96.

This was tantamount to a statement that the owners of the vessel should proceed with the prize action and establish whatever rights they might have in the ordinary way.

The district court thereupon proceeded to an assessment of the damages, and on appeal, the decree entered on the Commissioner's report was reversed by this Court,

on the ground that the decision below proceeded on improper grounds, and included an item of counsel fees which was not recoverable. 17 Wall., 29.

On the second appeal, Mr. Chief Justice Waite, in delivering the opinion of the Court, dealt with the question of the liability of the United States to pay the damages (pp. 101, 102), as follows:

"The first of the remaining questions to be considered is whether a decree can be entered against the United States for damages. As the capture was made by the army, or by the army and navy operating together, it inured exclusively to the benefit of the United States. There is no distribution of prize money in such a case. *Porter* v. *United States*, 106 U. S., 607; *The Siren*, 13 Wall., 389. The United States were, therefore, in legal effect the captors, and they came voluntarily into court to secure for themselves the benefit of what had been done. They deliberately adopted the acts of the military and naval officers as their own, and came, as captors, to condemn their prize. Offers to purchase the vessel were made and declined before she was seized, and soon after the seizure she was chartered and put into actual use without any attempt at securing an adjudication."

(P. 102: "Although the libel was filed on the 9th of June, 1862, and the claim was promptly put in, the adjudication was not had until June of the following year, when all further proceedings were stayed with the consent of both parties to await an adjustment of damages by the two governments. Nothing further was done until nearly seven years afterwards, when the secretary of State informed the Spanish government of the wish of the United States that the parties interested should apply to the court, which still retained jurisdiction, for such relief as justice demanded, and in the mode that tribunal should deem most proper and convenient. Thereupon, on motion of

the claimant, and with the consent of the United States district attorney, the reference was ordered to ascertain the damages. Under these circumstances we cannot but think the United States have voluntarily submitted themselves to the court at the instance of the Spanish government, and with the consent of the claimant, for the purpose of having the questions of damages growing out of the capture judicially settled according to the rules applicable to private persons in like causes.

"It is objected, however, that the executive department of the government had no power, in the absence of express legislative authority, to make such a submission. It was the duty of the United States, under the law of nations, to bring all captured vessels into a prize court for adjudication. If that had not been done in this instance, the Spanish government would have had just cause of complaint, and could have demanded reparation for the wrongs that had been done one of its subjects. The executive department had the right to bring the suit. In that suit it had been determined that the capture was unlawful. Necessarily, therefore, the question of damages to the owner of the captured vessel arose. Since, without the consent of the United States, no judgment for damages could be rendered against them in the pending suit *that could be enforced by execution*, the Spanish government had the right to assume the prosecution of the claim, and it did. Necessarily the negotiations on the part of the United States under this claim were conducted by the executive. After long delay no agreement was reached, and as a last resort for ending the controversy, it was determined to refer the whole matter to the court for judicial inquiry and determination. We can see no reason why this might not be done in such a case.

"It is true any judgment that may be rendered cannot be judicially enforced, but the questions to be settled are judicial in their character, and are incidents to the suit which the United States were required to bring to enforce their rights as captors. It is too late now to insist that the case is not one of prize, because in the libel it is expressly

alleged that the vessel was captured as lawful prize, and condemnation was asked on that account. When, therefore, the United States, through the executive of the nation, waived their right from exemption from suit, and asked the prize court to complete the adjudication of a cause which was rightfully begun in that jurisdiction, we think the government is bound by the submission, and that it is the duty of the court to proceed to the final determination of all the questions legitimately involved."

It is submitted with respect, that the Court, in that case, attached an undue importance to Mr. Davis's note. It is true that it had been preceded by certain negotiations looking to an amicable settlement of the controversy, but yet, in substance and effect, the note said nothing more than probably would have been said by the Secretary of State to these claimants, if they had presented a claim for indemnification to the executive branch of the Government, viz.: that the right to indemnity should be established in the ordinary manner in the court in which the controversy was pending.

Whatever doubts the Court may have had as to the propriety of determining the cause, as it did, may well have resulted from the fact that it was not, strictly speaking, a prize case. It was nothing more, in effect, than an impressment into the military and naval service of the Government of property found in the sphere of military operations. It would seem that, as the vessel never was returned to her owners, an action for her value might have been prosecuted in the Court of Claims. *United States* v. *Russell*, 13 Wall., 623; *Clark* v. *United States*, 95 U. S.,

539. The word "Prize," as was said by Lord Stowell in *The Genoa*, 2 Dodson, 468, "evidently means maritime capture effected by maritime forces *only*—ships and cargoes taken by ships." That definition was approved by this Court in the *Siren*, 13 Wall., 389, 395. But if the case could properly have been regarded as a maritime capture, still it would seem not to have been a case of lawful prize because of the provisions of the Act of July 2, 1864 (13 *Stat.*, 377), which declared that "no property seized or taken upon any of the inland waters of the United States, by the naval forces thereof, shall be regarded as maritime prize." The Court held that it was too late to raise the point that the case was not one of prize, after a libel had been filed by the United States, which expressly alleged "that the capture was lawful prize," and demanded condemnation on that account. P. 103.

It is thus seen that the case presented a peculiar state of facts, and any doubts expressed in the opinion as to the liability of the Government must be considered with reference to those facts. In the end, it was considered that the Government had, by the conduct of its agents, submitted itself to the jurisdiction of the Court, so that even on the facts as they stood, it should be adjudged liable to make compensation to the plaintiffs. The same result should follow in these causes, for the same reasons.

The English Courts also recognize the principle that a sovereign, otherwise exempt from suit, may subject itself to judgment in a cross-suit, if it invokes the juris-

diction of the court as a plaintiff. In the *Newbattle,* 10 Prob. Div., 33, the King of the Belgians, as owner of a commercial vessel named the *Louise Marie* instituted a collision action against the British steamer *Newbattle,* which was compelled to give bail. A cross-action was instituted, and an application was made to compel the King of the Belgians to give security thereunder. Butt, J., granted the application, and his action was confirmed by the court of appeal, consisting of Brett, M. R., Cotton, L. J. and Lindley, L. J. Brett, M. R., at p. 35, said:

"It has always, however, been held that if a sovereign prince invokes the jurisdiction of the Court as a plaintiff, the Court can make all proper orders against him. The Court has never hesitated to exercise its powers against a foreign government to this extent. It is another question as to what may be the result of an application for execution by seizure of the plaintiffs' ship, if the judgment should be against the plaintiffs."

Cotton, L. J., at p. 35, said:

"But when a government comes in as a suitor, it submits to the jurisdiction of the Court and to all orders which may properly be made. Regard must of course be had to the fact that in this case the King of the Belgians is a sovereign prince, but the order is nevertheless a proper one. It is a reasonable principle that a plaintiff whose ship cannot be seized, and against whom a cross action has been brought, shall put the defendant in the same position as if he (the defendant) were a plaintiff in an original action against a defendant whose ship could be arrested as security."

In *King of Spain* v. *Hallet,* 2 Bligh, n. s., 31, the de-

fendant filed a cross-bill against the King of Spain. The Lord Chancellor, at page 57, said:

"If he [a foreign sovereign] appears as plaintiff, you can do complete justice, you can impose any terms you think proper, you have them in your power, you may file a cross-bill, and then you have him completely under your control and jurisdiction."

4. No error has been assigned to the decision of the court below in awarding the damages against the United States alone, instead of against it and the naval captors jointly.

No application was made to the court below, so far as the claimants are aware, for a decree against the libelant and the naval captors jointly. It would seem that no such application could, properly, have been made, for the reason that the naval captors did not intervene as co-libelants, and join in the prayer for condemnation. Indeed the Revised Statutes do not appear to contemplate or to permit an intervention of that nature under the practice as it stood at the time of these captures. *R. S.*, §§ 4630, 4631, 4634.

The only contention presented by the United States Attorney, on this subject, was that the decree should be against the naval captors alone. There can be no question, it would seem, that the Court below rightly decided, on the record as it stood, against that contention. The naval captors had, it is true, taken and brought in the vessel; but their action had been ratified and confirmed by the United States, and the libel for condemnation was

in its name. The naval captors took no further part in the proceedings until after the condemnation of the vessel. Joint decrees against the libelant and the captors would have been of advantage to these claimants, but as the record stood there appeared to be no ground for asking the Court to enter them in that form.

The point appears, moreover, to be of academic interest only. It has been the general practice of the Government to indemnify its naval officers in all cases where judgments have been rendered against them for unlawful captures. Numerous instances of such action are cited in libelant's brief. The claimants in these cases may be unable to obtain satisfaction of their decrees, except through the medium of an appropriation. In the end, therefore, if the claimants must go to Congress to obtain whatever money is awarded to them, it is difficult to see how it will make any difference to the Government whether the decree is against the servants of the Government alone, or against those servants and the United States jointly, or against the United States alone.

LAST POINT.

THE DECREES IN THE CASES OF THE PAQUETE HABANA AND THE LOLA SHOULD BE AFFIRMED WITH COSTS.

March 17, 1903.

Respectfully submitted,

CONVERS & KIRLIN,

Proctors for the Appellees,

5 Beekman Street,

New York.

J. PARKER KIRLIN,

Advocate.

APPENDIX.

1.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

The United States vs. The Steamer "Labuan," her tackle, &c.,	In Prize.

To the Honorable SAMUEL R. BETTS, Judge of the District Court of the United States for the Southern District of New York:

The Petition of Intervention of S. Swartwout, Commander, and of the officers and men of the United States Vessel of War, the "Portsmouth," respectfully represents:

That they were the Naval Captors of the Vessel and Cargo, which have been sent in for adjudication herein by this Honorable Court, and as such have an equal interest with the Libelants in the said adjudication.

They aver that the facts set forth and contained in the Libel of information herein are all true and correct, and they join in the prayer thereof for the Decree of this Honorable Court of the condemnation of said captured property as lawful prize of war.

And these Intervenors do further pray, that after said Decree of condemnation shall have been duly rendered herein,

and the said captured property shall have been sold pursuant thereto, unless the same shall have been previously sold upon interlocutory order, this Honorable Court will proceed to render a final decree of division and distribution of the proceeds of the sale of said captured property, deducting therefrom the costs of these proceedings, pursuant to the Report of the Prize Commissioners, and in accordance with the provisions of the statutes of the United States.

F. H. Upton,
Proctor & Advocate
for the Naval Captors.

[Endorsed:]—17-126. Dist. Court of the United States. The United States *vs.* The Steamer "Labuan" & her Cargo. In Prize. Intervention of Naval Captors. F. H. Upton, Proctor. Filed 5 May, 1862.

A true copy.
Thos. Alexander,
[Seal.] Clerk.

2.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on Wednesday, the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Present—The Honorable CHARLES L. BENEDICT,
District Judge.

The United States of America vs. The Steamer "Labuan," her tackle, &c., and cargo.	In Prize. 17 126.

The Report of George F. Betts, Esq., Special Commissioner herein, to whom it was referred to ascertain and report the amount of damages sustained by the Claimants by reason of the seizure and capture of the above-named vessel and cargo in the above-entitled cause, and by which Report it appearing that the owners of the said Steamer "Labuan," viz., Messrs. William Bailey and William Leatham, have sustained by reason of said seizure and capture the following damages, viz.:

1.	The Labuan taken 1st Feby., 1862, and released by the Court May 21, 1862, being one hundred and eleven days at $1,000 per day	$111,000.00
2.	Detention during survey of damages, docking, refitting, &c., May 22nd to June 2d, 1862, 12 days at $1,000 per day	12,000.00
3.	Stores taken out of the vessel broken and destroyed, &c	7,752.68
4.	Captain Harnshaw for property lost	171.82
5.	Property lost by Charles Hargett (Mate)	96.80
6.	Interest on above from June 2, 1862, to March 17, 1868, at 6%	45,599.30
7.	Counsel fee	5,000.00
	Total	$181,820.60

And it further appearing by said report that Messrs. De Jersey & Co., the Owners of part of the cargo of said Steamer Labuan, have sustained by reason of said seizure and capture the following damages, viz.:

Loss of coal consumed on voyage from Matamoras to New York, £540.0s.0d. or	$2,613.60
Loss on Cotton damaged on voyage while under seizure	297.82
Law Expenses	702.50
	$3,613.92
Interest from May 21, 1862, to March 17, 1868, at 6%	1,172.38
Total	$4,786.30

And it further appearing that F. Armendaig, the owner of the residue of the said cargo, has sustained by reason of such capture and seizure the following damages, viz.:

Charges of Messrs. M. Echeverria & Co. and expenses attending the receiving, &c., of 170 Bales of Cotton	$1,335.72
Interest on the value of the Cotton while detained	400.45
Legal Expenses paid Wright & Merrihew	306.00
Legal documents from Matamoras	25.00
	$2,067.17
Interest from June 6, 1862, to March 17, 1868, at 6%	716.56
Total	$2,783.73

All of which items are on the basis of $4.84 to the pound Sterling.

And it further appearing that no exceptions have been filed to said report,

Now, on motion of Beebe, Dean & Donohue, for the claimants Bailey & Leatham, owners of said vessel, and for F. Armendaig, claimant of part cargo, the District Attorney appearing and not opposing,

It is Ordered and Decreed, that the said Report of said Special Commissioner be and the same is hereby in all things confirmed, and that final Judgment be and the same is hereby rendered in the above cause in favor of the claimants of said vessel and cargo against the Libelants and Captors for the respective sums so reported by said Referee on the ground that said captured property was not lawful prize of war.

CHAS. L. BENEDICT.

[Endorsed:]—17-126-130.—In Prize.—U. S. District Court for the Southern District of New York.—The United States of America *vs.* The Steamer Labuan, &c., and cargo. —Final Judgment for Claimants Beebe, Dean & Donohue, Proctors for Clts.—Bailey & Leatham & F. Armendaig.—Filed March 25th, 1868.

A true copy.

THOS. ALEXANDER,

[SEAL.] Clerk.

3.

CHAP. CCXX.—An Act to carry into effect the decree of the District Court of the United States for the Southern District of New York in the case of the British steamer Labuan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid, out of any money in the treasury not otherwise appropriated, to William Bailey, William Leetham and John Leetham, of England, or their legal representatives, owners of the British steamer Labuan, one hundred and thirty-one thousand two hundred and twenty-one dollars and thirty cents, with interest from June second, eighteen hundred and sixty-two, to the time of payment, and five thousand dollars without interest; also, to Messrs. De Jersey and Company, of England, or their legal representatives, part owners of the cargo of the same steamer, three thousand six hundred and thirteen dollars and ninety-two cents, with interest from May twenty-first, eighteen hundred and sixty-two, to the time of payment; and to Francisco Amendiaz, of Matamoras, Mexico, or his legal representatives, part owner of the cargo of the same steamer, two thousand and sixty-seven dollars and seventeen cents, with interest from June sixth, eighteen hundred and sixty-two, to the time of payment; such sums being due under a decree of the District Court of the United States for the Southern District of New York, pronounced March twenty-fifth, eighteen hundred and sixty-eight, on account of the illegal capture of the British steamer *Labuan* and her cargo by a cruiser of the United States.

Approved July 7, 1870.

16 Stat., 649.

4.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on Saturday, the Twenty-fourth day of October, in the year of our Lord one thousand eight hundred and sixty-three.

Present—The Honorable SAMUEL R. BETTS, District Judge.

The United States, &c., & Captors vs. The Schooner "Glen," her tackle, &c., and cargo.	In Prize. 18 22.

A decree of restitution of the above-named vessel and cargo having been heretofore made and entered in this cause in favor of the Claimant thereof and awarding said Claimant costs, damages and expenses, by reason of the illegal seizure of said vessel and cargo as prize: And it having been subsequently referred by an order of the Court herein to Henry N. Elliott, Esq., to ascertain and report the amount of such damages and expenses: And the said Referee having in pursuance of said order reported to the Court that the damages and expenses sustained by the said Claimant by reason of said illegal seizure of the vessel and cargo amounts to the sum of Seventeen thousand one hundred and fifty dollars and sixty-six cents ($17,150.66);

Now, on motion of Beebe, Dean & Donohue, Proctors for the Claimant of said vessel and cargo,

It is Ordered, that Final Judgment be and the same is hereby rendered in the above cause in favor of said Claimant against the Libelants and captors for the sum of Seventeen thousand one hundred and fifty dollars and sixty-six cents, being the amount of the damages and expenses sustained by the Claimant as aforesaid.

SAM'L R. BETTS.

[Endorsed:]—In Prize.—Vol. 18, No. 22.—United States District Court, for the Southern District of New York.—The United States & Captors *vs.* The Schooner "Glen," her tackle, &c., and cargo.—Final Judgment.—Beebe, Dean & Donohue, Proctors for Clmt.—Filed the Twenty-fourth day of October, 1863.

A true copy.

THOS. ALEXANDER,

[SEAL.] Clerk.

5.

CHAP. X.—An Act to indemnify the owners of the British schooner Glen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid to the owners of the British schooner *Glen*, out of any money in the treasury not otherwise appropriated, the sum of Seventeen thousand one hundred and fifty dollars and sixty-six cents, the same being the amount awarded as an indemnification to the parties interested, by the District Court of the

United States of America for the Southern District of New York, for costs, damages and expenses, by reason of the illegal seizure of the said vessel and cargo as prize.

Approved February 13, 1864.
13 Stat., 575.

6.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on Monday, the Second day of March, in the year of our Lord one thousand eight hundred and sixty-eight.

Present—The Honorable SAMUEL BLATCHFORD, District Judge.

The United States, &c., vs. The Schooner "Sybil," her tackle, &c., and cargo.	In Prize, 18,506.

A decree having been heretofore on the 21st day of December, 1864, made and entered in this cause, decreeing that the above-named vessel, her tackle, &c., and cargo be restored to the claimants thereof with costs to the said claimants on the ground that said captured property was not lawful prize of war. And it having been subsequently referred by an order of the Court

made herein on the 13th day of April, 1867, to John A. Osborn, Esq., as Special Commissioner to ascertain and report the amount of damages to which the claimants of the said vessel and cargo are entitled by reason of the capture and seizure herein, each party to have the right to put in proof on any point they might be advised, all other questions being reserved until the coming in of the Report of said Special Commissioner, and the said Referee having by his Report dated the 1st day of February, 1868, and filed in this Court on said last-named day and made in pursuance of said order, reported to the Court that there is due to Godfried Knoop, the claimant of two hundred and eighty-four bales of cotton (the same being a part of the cargo of said vessel) the sum of Forty-one thousand four hundred and twenty-nine dollars and fifty-nine cents, together with Fifteen hundred dollars counsel fees which he, said Knoop, paid to his counsel employed in the suit, making in all as damages and expenses the sum of Forty-two thousand nine hundred and twenty-nine dollars and fifty-nine cents, and that there is due to Thomas J. Hand, claimant of four bales of cotton (the same being a part of the cargo of the said vessel) the sum of Five hundred and seventy-six dollars as damages for depreciation in said cotton; and that the owner of the said vessel sustained a loss by the detention of the said vessel while under seizure to the sum of Six thousand and six hundred dollars, the vessel having been detained thirty-three days at two hundred dollars per day, and that the said owner was put to the expense of paying One hundred dollars for papers and documents for the suit in Court, together with the sum of One thousand dollars to counsel employed by said owner, making in all as damages to the owner of the vessel and expenses of defending the suit the sum of Seven thousand seven hundred dollars, with interest on the same from January 1st, 1865, to February 1st, 1868, amounting to Fourteen hundred and twenty-four dollars and fifty cents, making in all as damages to the owner of the vessel

or to Oliver K. King, the person for whom the vessel ws held in trust, including the interest as aforesaid, the sum of Nine thousand one hundred and twenty-four dollars and fifty cents. And no exceptions on the part of the United States having been filed to said Commissioner's Report,

7.

Now, on motion of Bowdoin, Larocques & Barlow, proctors for Godfried Knoop, and of Beebe, Dean & Donohue, proctors for Thomas J. Hand and for William Stewart (the owner of said vessel), it is ordered, adjudged and decreed that the said Report be and the same is hereby confirmed and that Final Judgment be and the same is hereby rendered in the above cause in favor of the claimants, against the libelants and captors for the respective sums so reported by said Referee, on the ground that said captured property was not lawful prize of war, the amount awarded to the owner of the vessel to be paid to Oliver K. King.

SAM'L BLATCHFORD.

[Endorsed:]—In Prize.—Vol. 18, No. 506.—United States District Court, for the Southern District of New York.—The United States *vs.* The Schooner Sybil, &c., & cargo.—Final Judgt. agst. Libts. & captors & in favor of Clts. for $52,630.09/100.—Bowdoin, Larocques & Barlow, Proctors for Godfried Knoop, Clt., 284 Bales Cotton. Beebe, Dean & Donohue, Pr. for T. J. Hand, Clt., 4 Bales Cotton, & Wm. Stewart, Clt. of vessel.—Filed the Second day of March, 1868.

A true copy.

THOS. ALEXANDER,

[SEAL.] Clerk.

CHAP. CCXXI.—An Act to carry into effect the decree of the District Court of the United States for the Southern District of New York in the case of the English schooner *Sibyl* and her cargo.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby authorized and directed, out of any money in the treasury not otherwise appropriated, to make the proper payments to carry into effect the decree of the District Court of the United States for the Southern District of New York, bearing date the second day of March, eighteen hundred and sixty-eight, in the case of the English schooner *Sibyl* and her cargo, illegally seized by a cruiser of the United States; such payments to be made as follows, viz.: To the several persons named in such decree, or their legal representatives, the sums therein awarded to them respectively, with interest from the date of the decree.

Approved July 8, 1870.

16 Stat., 650.

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 580.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "PODER DE DIOS," JULIAN PENGOCHEA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.
(18808.)

3611

SUPREME COURT OF THE UNITED STATES.

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a In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "PODER DE DIOS," JULIAN Bengochea et al., claimants. } No. 580.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing-smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 29; "testimony in Havana," being claimants' testimony in full, pp. 39–47, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the middle of p. 53 and extending to the end of the first three lines on p. 54; the following portions of the "testimony in Key West," viz, an extract
b from the testimony of W. D. Cash, a Government witness, beginning at the middle of p. 70 and extending to the subheading "Cross-examination" on p. 72; an extract from the testimony of W. B. Curry, a Government witness, beginning with the question, "Were you a member of the firm of Cash & Curry?" on p. 87, and extending to the end of the redirect examination of said witness, on p. 89; the "commissioner's findings," on p. 98; the last paragraph of the final decree of the court below, on p. 111.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRTEN,
Proctors for Claimants.

c (Indorsed:) Supreme Court of the United States. The United States, appellant, *v.* The fishing smack "Poder de Dios," Julian Bengochea et al., claimants. Stipulation as to record.

d (Indorsed:) File No. 18808. Supreme Court U. S., October term, 1902. Term No. 580. The United States, appellant, *vs.* The fishing smack "Poder de Dios," &c. Stipulation to omit parts of record in printing. Filed March 5th, 1903.

29 District court of the United States, southern district of Florida.

Spanish sch. "Poder de Dios." Prize No. 23.

Clerk's statement.

Proceeds of sale deposited		$1,010.00
Paid fees, prize commissioners, & expenses	$37.22	
" " clerk	40.90	
" " marshal, and expenses	276.79	
		349.91
Paid claimant under decree April 5th, 1900		$660.09

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) No. 23. United States vs. "Poder de Dios." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

39 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"PODER DE DIOS," JOSE BENGOCHEA, claimant. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Jose Bengochea, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who, having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, depose and answer as follows:

I. To the first interrogatory the said Jose Bengochea answers and says as follows:

My name is Jose Bengochea; I am 29 years of age, and am a merchant doing business at No. 2 San Pedro St., in partnership with my uncle, Julian Bengochea. I resided at the same place during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

The owners of the fishing smack "Poder de Dios" were at that time my uncle, Julian Bengochea, and Francisco Gonzales; the value of the vessel was $6,500 Spanish gold; the vessel cost $4,000 in 1896, when purchased by my uncle and his partner, and about $2,500 was expended upon her for repairs and improvements.

40 III. To the third interrogatory he answers and says:

The usual earnings of this vessel were estimated at 19 to 21 per cent on the capital invested in her; ascertained by the annual balance made of her business when liquidation of her earnings was made. This is the only means that I had of ascertaining regarding her earnings.

IV. To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez, of Key West, is the agent and attorney in fact of the owners of said vessel.

V. To the fifth interrogatory he answers and says:

I have nothing to add.

Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

I have known the "Poder de Dios" only since the time of her purchase by my uncle and his partner interested in her. I think her net tonnage is 51 tons. I do not know the gross tonnage, nor when she was built. I believe, however, she was built in Nassau, N. P.

II. X. To the second cross-interrogatory he answers and says:

The vessel was purchased in Havana on October 13 97, from Don Antonio Carballo, through his attorney, Jose Carballo, by my uncle, Julian Bengochea, and Francisco Gonzales. The said Jose Carballo resides in Havana.

III. X. To the third cross-interrogatory he answers and says:

The amount paid was $4,000 Spanish gold in cash, being for his own and his partner's share. I present to the commissioner the original notarial certified copy of the deed or bill of sales, to have a copy made of certain parts of same relative to this vessel, then called and registered as "Gran Poder," and of the endorsement of the record of her
41 register at the office of the captain of the port under the name of "Poder de Dios," dated Dec. 31, 1897, Exhibit A.

IV. X. To the fourth cross-interrogatory he answers and says:

She was engaged in the fishing business from the time purchased until captured.

V. X. To the fifth cross-interrogatory he answers and says:

She was never engaged in any other business.

VI. X. To the sixth cross-interrogatory he answers and says:

The seamen received a percentage of the earnings of the vessel, thus calculated: From the gross receipts of the cargo of live fish 75 cents per quintal for "cherna" and $1 per quintal for "pargo" or red grouper, was first deducted as an allowance to the vessel for expenses, etc., and then two-thirds of the remainder went to the seamen, the other one-third to the vessel.

VII. X. To the seventh cross-interrogatory he answers and says:

The trips of this vessel are calculated to have been about 13 trips annually. All the data respecting the dates of her departure and entry, the quantity of fish captured on each trip, the amount realized therefrom, and the proportionate shares of same that went to the vessel and the seamen, were all kept in the books and accounts made by the firm or company of Domingo Trocha & Co.

VIII. X. To the eighth cross-interrogatory he answers and says:

No books were kept by us, because each trip was liquidated for at the time, and any memorandum, if made, destroyed.

IX. X. To the ninth cross-interrogatory he answers and says:

The name of the master at that time was Marcus Ojeda. He is now in command of the schooner "Puerto de la Orotava," in this port. The names of the seamen who have been engaged on the "Poder de Dios"

I do not know, but they are on the rolls or crew lists of the vessel which have been filed at the court in Jacksonville, Fla.

X. X. To the tenth cross-interrogatory he answers and says:

Yes, to the amount of $2,500, shortly after her purchase as previously mentioned. They were made at the shipyard of Geferino Miranda, in Regla, but I can not particularize the exact dates or amount. The gross amount is as stated.

And further this deponent sayeth not.

JOSE BENGOCHEA.

Answered under oath and subscribed before me at Havana this 28 day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

43 JUAN LLURIA Y PUJADAS.

I. To the first interrogatory the said Juan Lluria Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes St., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia or harbor master of this port. At the time mentioned—April and May, 1898—and prior thereto, I resided at the same place and with the same business.

II. To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about thirty years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially all vessels that made repairs in this port. I have inspected and valued the fishing smack "Poder de Dios" to be worth on the first of March, 1898, $6,500 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels made at the request of Messrs. Vilar, Senra & Co., Bengochea & Co., and filed with my declaration in the case of "Antonio y Paco" and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Poder de Dios," to be filed for convenience with this declaration, Exhibit A.

44 Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

The position that I held was that of maestro mayor de bahia or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel, respecting her inspection, valuation, expense of repairing, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra & Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition in which they were in the first day of March, of this year,

Do hereby certify that, owing to the constant inspection which I make of these vessels in my official capacity, the fishing smack "Poder de Dios" registered folio 2167, of 58 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with necessary iron ballast, capstan, two anchors and chains, galley caboos' and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $6,500 Spanish gold.

* * * * * * *

In testimony whereof I have issued this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

45 I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in the case of "Antonio y Paco," and referring to the vessel named in this commission, the "Poder de Dios.

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT "A."

At the execution of a commission for the examination of witnesses between the United States vs. "Poder de Dios" Jose Bengochea, claimant, this paper marked "Exhibit A" was produced and shown to the witness Juan Lluria Pujadas and by him deposed unto and subscribed at the time of this examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON:

I. To the first interrogatory, the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation and I resided at Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May 1898, and was familiar with the market prices of fish,

fresh and salted, during said period; salted fish were sold at Havana during said months, at $10 (ten dollars) Spanish silver per quintal and fresh fish were sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

III. To the third interrogatory he answers and says:

46 Before the blockade was declared, fresh fish were sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and one-half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish were never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce

FRANC. GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ:

I. To the first interrogatory, the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez. Am 34 years of age; I am engaged in commerce, as a member of the firm of Vilar, Senra & Co. That was my occupation at the time mentioned in April and May, 1898, and I resided then as now, in this city at No. 2. Enna st.

II. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish and salted fish and was familiar with the market prices of fresh and salted fish in Havana, during said months of April and May, 1898. The prices at that time were $10 (ten dollars) silver per quintal, of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

III. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During previous years the usual market price

47 for fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars, Spanish silver per quantal. On account of the blockades established by the United States about April 21st, the price of fresh fish gradually rose to the price that I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana, this 25 day of Aug., 1900.

JOSEPH A. SPRINGER.

CITY OF HABANA,
Island of Cuba:

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Jose Bengochea, Juan

Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who having been duly sworn, did, on the said days, answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respectfully made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof, I have hereunto set my hand and affixed my seal at the city of Havana, the 29 day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

49 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

52 53 Q. Now, do you remember the "Poder de Dios?"

A. Only in a general way.

Q. How much did she sell for?

(Same objection.)

A. My recollection is a little over a thousand dollars. A thousand and ten dollars she sold for.

Q. She is valued by the owner at four thousand dollars; do you consider that a fair price for her?

(Objected to as immaterial and irrelevant, as applied to American value, and also because sufficient foundation has not been laid for the question.)

A. I consider it excessive, estimating the value in this country.

Q. What would you consider a fair price for her from your recollection of her condition?

(Same objection.)

A. Now, I suppose you mean, to Key West, don't you?

Q. Yes, sir.

54 A. I would say twenty-five hundred dollars. I don't recollect the exact condition of this boat; some of them were run down and some in pretty good condition. It is hard for me to distinguish at this time.

* * * * * * *

69 WILLIAM D. CASH, a witness in behalf of the United States, being first duly cautioned and sworn, testified as follows:

* * * * * * *

70 Q. Do you know the fishing smacks known as the "Poder de Dios" and the "Antonio y Paco?"

A. Yes, sir; I knew these two as sold.

Q. Did you, or the firm of which you were a member, purchase the smacks just named by me?

A. The firm of Cash & Curry purchased the smacks "Antonio y Paco" and "Poder de Dios."

Q. At what prices?

A. "Antonio y Paco," $1,910; and the "Poder de Dios," $1,010.

Q. Did you, prior to the purchase or subsequently, ever make an examination of said vessels for said firm?

A. A few days prior to the sale, Mr. Curry and myself went on board of these smacks, made an examination as to their condition and what we thought was their value for purchase.

Q. State what you found to be the condition of said vessels from your examination.

A. From examination we found that the two vessels were in a very fair condition; one of them "Antonio y Paco," was of more value
71 than the "Poder de Dios;" then we determined when the sale came off what prices we would pay for the one and the other.

Q. From your knowledge of the values of sailing vessels, would you say that the prices paid by you for said vessels, respectively, were the fair purchase prices?

A. We concluded, at least we set a price that we thought each one was worth, and at the time of the sale probably the whole brought less than we expected to pay for them as a matter of speculation if the fishing business opened to them.

Q. Then, I understand you to say, that you paid, approximately, the prices which, upon examination, you had concluded would be fair purchase prices for your purposes?

A. Over, either for speculation or put them into the business.

Q. Did you sell those vessels?

A. We sold them.

Q. At what prices?

A. We sold the "Antonio y Paco" for $2,900, and we sold the "Poder de Dios" for $1,500.

Q. Do you know the amount expended for repairs on said vessels?

A. I do not know from memory, but can tell.

Q. From the books?

A. I can tell exactly from the books.

Q. Was there any competition at the sale of these vessels?

A. Yes, there was considerable competition.

Q. When you examined these vessels did you find that any repairs would be necessary to put them in proper condition for use of sailing?

72 A. To change the speculation we found that it would be necessary to make some repairs, but for matter of sailing we had not considered that proposition whether we should repair them or not, if so it would be necessary to make some repairs.

Q. Do you recollect the tonnage?

A. I do not know.

* * * * * * *

86 WILLIAM B. CURRY, a witness produced on behalf of the United States, being first duly sworn, deposes and says:

* * * * * * *

87 Q. Were you a member of the firm of Cash & Curry?

A. Yes, sir.

Q. Did you recollect the sale of the fishing smacks captured as prizes during the Spanish-American war?

A. Yes, sir.

Q. Do you recollect about when that was?

A. In 1898.

Q. Do you know the vessels bought by that firm?

A. Yes; the "Poder de Dios" and the "Antonio y Paco."

Q. What were the prices paid for them?

A. For the "Poder de Dios," $1,010.00, and for the "Antonio y Paco," $1,910.00.

Q. Did you make an examination of these vessels at or near the time of purchases?

A. Yes, sir.

Q. What was their condition?

A. The "Poder de Dios" was in a fair condition, and the other one, "Antonio y Paco," was in a good condition also.

Q. Were any repairs to these two vessels made by your firm?

A. There were no repairs made that I remember of.

Q. Were they not put in good condition before they were sold?

A. They were put on the ways, cleaned, and painted.

88 Q. Can you state about the cost of all these repairs?

A. No; unless I refer to the books of the store.

Q. Have you any idea?

A. No, sir.

Q. From your knowledge of the value of sailing vessels, what would you say was the value of these at the time you purchased them?

A. The "Poder de Dios," I suppose, was worth $2,800.00, and the "Antonio y Paco" was worth, according to the business conditions existing—she was worth not more than we paid for her. At that time we paid $1,910.00.

Q. What would you say was her full value?

A. She was worth about $4,000.

Q. Under the business conditions existing, what was her value?

A. What we paid for her.

Cross-examination:

Q. Does the firm of Cash & Curry still own these vessels, or are these vessels sold?

A. They are sold.

Q. When did they sell them?

A. A few months after the purchases of them.

Q. Why did they sell them?

A. On account of lack of employment for them.

Q. Why did you purchase these two vessels?

A. We purchased them—that is, under the impression that after the war was over that American vessels would be allowed to fish in Cuban ports, not having to pay a duty on fish more than vessels of other nationalities.

Q. How much did you get for the "Antonio y Paco?"

A. $2,900.00.

Q. How much for the "Poder de Dios?"

A. $1,500.00.

Q. Did you ever buy and sell fishing smacks?
A. No, sir.

89 Redirect examination:

Q. Were the vessels in, small sailing vessels?

A. I traded in a small one, about fifteen tons, as far as I can remember; the other was sixty-four tons, and the other one owned was about one hundred seventeen tons.

* * * * * * *

98 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "PODER DE DIOS" AND CARGO, Jose Bengochea, claimant, on behalf of owners and crew. } Prize No. 23.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. The "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I found the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$6,500.00	
Cargo, 130 kintals fish, $5	650.00	
		$7,150.00
Interest on do. at 8 % from date of capture, May 7th, 1898, to Nov. 2nd, 1901		1,995.64
		9,145.64
Less proceeds already returned claimant		660.09
		8,485.55
And expenses of issuing commission and executing commission in Havana		21.75
Total		8,507.30

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

110 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "PODER DE DIOS," JULIAN BENGOCHEA and Francisco Gonzalez, claimants.

An interlocutory decree having been entered herein on or about April 5, 1900, directing, among other things, that the libel be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein,

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein at the sum of $\$8,507\frac{30}{100}$, as will more fully appear from his report on file,

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
111 found by the commissioner,

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902,

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to,

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimants, Julian Bengochea and Francisco Gonzalez, have, receive, and recover from the United States, the libellant herein, the sum of $\$8,507\frac{30}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Poder de

Dios" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16th, 1902, amounting to the sum of $419\frac{54}{100}$, making in all the sum of $8,951\frac{84}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

* * * * * * *

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18808. S. Florida D. C. U. S. Term No. 580. The United States, appellant, *vs.* The Fishing Smack "Poder de Dios," Julian Bengochea et al., claimants. Filed January 31, 1903.

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36417

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 580. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," ETC.;

No. 581. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ETC.;

No. 582. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," ETC.;

No. 583. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," ETC.;

No. 584. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," ETC.;

No. 585. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "FERNANDITO," ETC.;

No. 586. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ORIENTE," ETC.;

No. 587. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPANA," ETC.;

No. 588. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," ETC.; AND

No. 589. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," ETC.

STIPULATION AS TO FACTS.

FILED MARCH 13, 1903.

1 # SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 580. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," ETC.;

No. 581. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ETC.;

No. 582. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," ETC.;

No. 583. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," ETC.;

No. 584. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," ETC.;

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No. 587. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPANA," ETC.;

No. 588. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," ETC.; AND

No. 589. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," ETC.

STIPULATION AS TO FACTS.

It is hereby stipulated that the following facts appear in the original transcripts herein, viz:

580.

The "Poder de Dios."

The "Poder de Dios" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on May 7, 1898. The said
2 "Poder de Dios" is a fishing smack about 54 feet long on the keel, and of 56 tons burden, and at the time of capture carried as cargo 13,000 pounds of live fish and 80 kintals of salt fish.

No. 581.

The "Antonio y Paco."

The "Antonio y Paco" was seized by the U. S. ship "New York," Commander B. F. Tilley, U. S. N., commanding, on May 2, 1898. The said "Antonio y Paco" is a fishing smack about 57 feet long on the keel and of 46 tons burden, and at the time of capture carried as cargo 15,000 lbs. of live fish.

No. 582.

The "Engracia."

The "Engracia" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on April 26, 1898. The said "Engracia" is a fishing smack, about 60 feet long on the keel and of 43 tons burden, and at the time of capture carried as cargo 12,000 lbs. of live fish and 20 kintals of salt fish.

No. 583.

The "Severito."

The "Severito" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on May 9, 1898. The said "Severito" is a fishing smack about 50 feet long on the keel and of 35 tons burden, and at the time of capture carried as cargo 5,000 lbs. of live fish and 15 kintals of salt fish.

No. 584.

The "Antonio Suarez."

The "Antonio Suarez" was seized by the U. S. ship "Uncas," Lieut. F. R. Brainard, commanding, on May 3, 1898. The said "An-
3 tonio Suarez" is a fishing smack about 54 feet long on the keel and of 40 tons burden, and at the time of capture carried as cargo 5,000 lbs. of live fish.

No. 585.

The "Fernandito."

The "Fernandito" was seized by the U. S. ship "Vicksburg," Commander A. B. H. Lillie, commanding, on May 7, 1898. The said "Fernandito" is a fishing smack about 45 feet long on the keel and of 35 tons burden, and at the time of capture carried as cargo 9,000 lbs. of live fish and 40 kintals of salt fish.

No. 586.

The "Oriente."

The "Oriente" was seized by the U. S. ship "Vicksburg," Commander A. B. H. Lillie, U. S. N., commanding, on May 5, 1898. The

said "Oriente" is a fishing smack about 60 feet long on the keel and of 45 tons burden, and at the time of capture carried as cargo 9,000 lbs. of live fish and about 3,000 pounds of salt fish.

No. 587.

The "Espana."

The "Espana" was seized by the U. S. ship "Newport," B. F. Tilley, U. S. N., commanding, on May 7, 1898. The said "Espana" is a fishing smack about 60 feet long on the keel and of 80 tons burden, and at the time of capture carried as cargo 18,000 pounds of live fish and 45 kintals of salt fish.

4 No. 588.

The "Cuatro de Setiembre."

The "Cuatro de Setiembre" was seized by the U. S. ship "Helena," Commander W. T. Swinburne, commanding, on April 27, 1898. The said "Cuatro de Setiembre" is a fishing smack about 60 feet long on the keel and of 30 tons burden, and at the time of the capture carried as cargo 15,000 pounds of live fish.

No. 589.

The "Santiago Apostol."

The "Santiago Apostol" was seized by the U. S. ship "Mayflower," Commander M. R. S. Mackenzie, U. S. N., commanding, on May 8, 1898; the said "Santiago Apostol" is a fishing smack about 78 feet long on the keel and of 70 tons burden, and at the time of capture carried as cargo 19,000 pounds of live fish and 100 kintals of salt fish.

HENRY M. HOYT,
Assistant Attorney-General, Counsel for the Appellants.
J. PARKER KIRLIN,
Counsel for the Appellees.

5 (Indorsed:) File No. 18808, &c. Supreme Court U. S., October term, 1902. Term No., 580 to 589. The United States, appellant, vs. The "Poder de Dios," et al. Stipulation as to facts. Filed March 13, 1903.

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AGREED RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902

No. 561

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ANTONIO Y PACOS" [illegible] LOPEZ ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903

30421

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 581.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ANTONIO Y PACO," ANGEL LOPEZ ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States, October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ANTONIO Y PACO," Angel Lopez et al., claimants.
No. 581.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 28; "testimony in Havana," being claimants' testimony in full, pp. 38–52, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the middle of p. 62 and extending to "cross-examination" on same page; the following portions of the "testimony in Key West," viz, an extract from
b the testimony of W. D. Cash, a Government witness, beginning at the top of p. 74 and extending to the subheading "cross-examination" on p. 75; an extract from the testimony of W. B. Curry, a Government witness, beginning with the question "Were you a member of the firm of Cash & Curry?" on p. 91, and extending to the end of the redirect examination of said witness on p. 93; the "commissioner's findings" on p. 102; the last paragragh of the final decree of the court below on p. 115.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18809. Supreme Court U. S. October term 1902. Term No. 581. The United States, appt., vs. The Fishing Smack "Antonio y Paco," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

28 United States district court, southern district of Florida.

Spanish schr. "Antonio y Paco." Prize No. 16.

Clerk's statement.

Proceeds of sale deposited		$1,910.00
Paid fees prize commissioner and expenses	$35.27	
Paid fees clerk	40.45	
Paid fees marshal and expenses	300.99	
		376.71
Paid claimant under decree April 5th, 1900		$1,533.29

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Antonio y Paco." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

38 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"ANTONIO Y PACO," FRANCISCO VILAR, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Francisco Vilar, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answers to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

I. To the first interrogatory the said Francisco Vilar answers and says as follows:

39 My name is Francisco Vilar y Casteleiro; I am 43 years of age; merchant; member of the firm of Vilar, Senra Co., No. 2 Enna St., where I resided during the time mentioned—the months of April and May, 1898.

II. To the second interrogatory, he answers and says:

The owner of the Spanish fishing smack "Antonio y Paco" was my said firm of Vilar, Senra & Co., the owner of two-thirds, and D. Angel Lopez of one-third, at the time of her capture off the coast of Cuba on or about May 2nd, 1898, by the U. S. Navy during the late war between the United States and Spain. The value of the vessel was then $8,250.00. This valuation is based upon her purchase price, which was $6,000.00; but on account of repairs and improvements made on her, and consequently increased carrying capacity by a new well, she was valued on Jan. 1st, 1898, at $8,250.00, Spanish gold. My firm owned two-thirds of her, and had an interest in her to that amount of $5,000.00.

III. To the third interrogatory, he answers and says:

This vessel usually earned about one and one-half per cent per month

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on the amount representing her capital—for her exact earnings I refer to the books of my firm.

IV. To the fourth interrogatory, he answers and says:

Yes; the agent of the owner of said vessel and attorney-in-fact is Mr. Ramon Alvarez, who resides in Key West.

V. To the fifth interrogatory, he answers and says:

Our firm profits from the purchase of fish from the fishing vessels at the market rates and sale of same at retail prices. When this business was affected by the blockades established against this port by the United States naval forces, our firm suffered from the rise in the market prices and the scarcity of fish brought in by our vessels.

40 Cross-interrogatories:

I. To the first cross-interrogatory he answers and says:

I have known the Spanish fishing smack "Antonio y Paco" since the year 1884. Her tonnage is net 42 tons; I can not remember exactly the gross tonnage. I believe she was built in the United States, but I can not state exactly when or where particularly.

II. To the second interrogatory he answers and says:

The "Antonio y Paco" was purchased or transferred to the present owners from the firm of C. Garcia y Cia in January, 1896. The said firm is dissolved, but the principal partner, Don Celestino Garcia, now resides at No. 111 Manrique st., in this city.

III. To the third cross-interrogatory he answers and says;

The purchase price of the "Antonio y Paco" was $6,000.00 and was purchased or transferred to my firm of Vilar, Senra & Co. as successors of the liquidated firm of C. Garcia & Co., at that price, we holding in her an interest of two-thirds, and one-third interest was acquired by Angel Lopez. After a quantity of repairs and improvements had been made on her, two-thirds was valued in our books at $5,500.00.

IV. To the fourth cross-interrogatory he answers and says:

The vessel was engaged in the fishing business during all the time mentioned.

V. To the fifth cross-interrogatory he answers and says:

She has not been engaged in any other business whatever.

VI. To the sixth cross-interrogatory he answers and says:

The seamen operating the vessel were compensated by receiving a percentage of her earnings, calculated as follows: The two-thirds part of the vessel's products, taking the live fish at the price of three and three-quarters of a dollar in Spanish silver per quintal for "cherna,"
41 or grouper, the pargo, or red grouper, being estimated at a higher price—six dollars Spanish silver per quintal. That is to say, the price of "cherna," although estimated at $3.75, sold at $4.50, leaving a benefit or allowance to the owners of the vessel of 75 cents per quintal, and from sales of the pargo or red grouper, credited at $6.00, but which generaliy obtained $7.00 per quintal, one dollar per quintal remained as an allowance for the benefit of the vessel and owners. This benefit or allowance for vessel expenses, of 75 cents for "cherna" and $1.00 for "pargo" per quintal, was first deducted from the products of the catch, and of the remainder crediting the "cherna" at $3.75 and the "pargo" at $6.00, two-thirds went to the crew. Salted fish was sold

without any further deduction than one-third for the owners, and two-thirds went to the crew.

VII. To the 7th cross-interrogatory he answers and says:

I can not state exactly with respect to this vessel the number of trips made during the two years next preceding her capture for the dates of departure and entry of each trip, nor the quantity of fish, and the amount realized from the sale of each cargo, without making special reference to the books of my firm.

I have stated the proportion of the cargo that went to the owners and how much to the seamen, and I desire further to state that in case any amount is collected by me or my firm on account of this claim, and the settlement of this suit, or which any part thereof may appear as due or coming to the crew of the vessel, that we firmly bind ourselves and become responsible for the settlement, liquidation and payment of same to the crew.

VII. To the eighth cross-interrogatory he answers and says:

Yes; my firm kept books, and I herewith produce the same with reference to the business of this vessel, for exhibition to the commissioner, and file transcripts therefrom, showing the receipts and disbursements of the said "Antonio y Paco" for the two years next preceding her capture, or from January, 1896, to April, 1898. I also
42 produce extracts showing the dates of arrival and quantity of live and salted fish of her cargo for each trip, and the total amount realized from sale of the cargo of each trip.—Exhibits "A" and "B."

IX. To the ninth cross-interrogatory he answers and says:

The name of the "patron" or master of said "Antonio y Paco" at the time of her capture about May 2, 1898, was Angel Lopez, the part owner. He resides at Casa Blanca. The names of any patrons or masters she may formerly have had, as well as the seamen or fishermen employed for the period named, all appear in the respective "rolls" or crew lists of each ship, which I understand are already on file in the court at Jacksonville, Florida.

X. To the tenth cross-interrogatory he answers and says:

At the time of the constitution of my firm, and purchase or transfer from the firm of C. Garcia y Cia, of the said vessel two-thirds of her—the vessel was valued at six thousand dollars, but on account of considerable repairs being made upon her, such as a new well, which measurably increased her carrying capacity, new rigging and sails, this vessel was valued on our books on Jan. 1st, 1898, at five thousand five hundred dollars, Spanish gold, for our two-thirds, or a total value of $8,250.00. All these repairs were made about October, and before Jan. 1st, 1897, and the values estimated from material purchased by the firm, and labor employed by the day, our firm paying for two-thirds of all expenses.

And further this deponent sayeth not.

FRANCISCO VILAR.

Answered under oath, and subscribed before me, at Havana, this 25th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

43 *Extracts from the amount of two-thirds of the smack "Antonio y Paco."*

1896.			
Jan. 1st.	Settlement with C. G. & C. & cost 2/3		$4,000.00
" 31.	Cash	$39.90	
Feb. 18.	"	68.73	
" 13.	Fittings	4.67	
" "	Cash	14.00	
" 15.	"	43.33	
" 18.	Fittings	1.90	
" 24.	Cash	4.00	
" 26.	"	15.34	
" 29.	"	.66	
May 7.	"	3.00	
" 8.	"	37.62	
" 31.	"	8.06	
Apr. 30.	"	9.40	
May 16.	"	1.84	
" 31.	"	.60	
June 30.	"	34.00	
" "	Ciggie & Bunel act	38.01	
	Profit and loss	192.11	
		$517.17	4,000.00
July 1.	Balance		4,000.00
Aug. 31.	Ciggal & Buttrel act	11.78	
Sept. 30.	" " " "	24.32	
Oct. 10.	Cash	34.00	
" 21.	"	.50	
		$70.60	4,000.00
Jan. 1 13.	Ourr 2/3 of cargo	54.28	
Feb. 7.	" " "	71.28	
" 13.	" " "	13.30	
May 7.	" " "	82.88	
Apr. 16.	" " "	47.34	
" "	" " "	67.34	

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	May 1896.		
	May 25. Our 2/3 of the cargo	$88.02	
June	" " " " "	92.73	
"	30. Balance		$4,000.00
		$517.17	$4,000.00
Aug. 11.	Our 2/3 of cargo	82.22	
" "	" " "	76.90	
Sept. 16.	" " "	98.84	
		$257.66	

		Over		70.60	$4,000.00
Oct.	24.	Cash		2.00	
"	31.	Capjal & Buttrel		43.06	
Nov.	21.	Cash		7.34	
"	"	Fittings		3.00	
"	23.	"		.50	
Dec.	18.	Cash		1.40	
"	18.	"		2.50	
"	21.	"		8.00	
"	31.	"		27.32	
		Profit		279.76	
				$445.49	$4,000.00
Jan.	10.	Balance			$4,000.00
Feb.	28.	Work, hardware		$15.00	
Mar.	21.	Fittings		6.00	
"	31.	Cash		4.20	
"	"	"		195.47	
April	17.	"		50.00	
"	30.	"		28.80	
May	19.	"		3.16	
"	23.	"		3.00	
"	31.	Work, hardware		21.02	
June	18.	Cash		6.00	
"	26.	"		26.56	
		Profits		422.03	
				$782.24	$4,000.00
	1897.				
	July 10.	Balance			$4,000.00
45		Brought over		$207.66	
	Nov. 20.	Our 2/3 of cargo		84.01	
Dec.	21.	" " " "		103.82	
"	31.	Balance			$4,000.00
				$445.49	$4,000.00
1897.					
Fer.	4.	Our 2/3 of cargo		$117.62	
Mar.	2.	" " " "		81.00	
"	16.	" " " "		70.20	
"	31.	" " " "		37.20	
April	22.	" " " "		119.48	
"	29.	" " " "		83.51	
May	24.	" " " "		143.67	
June	14.	" " " "		129.56	
"	30.	Balance			$4,000.00
				$782.24	$4,000.00

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1897.		Balance			$4,000.00
July	31.	Cash		2.62	
Aug.	31.	"		13.57	
Sept.	3.	"		8.66	
"	9.	"		.75	
"	15.	"	6.66		
"	25.	"	7.00		
"	26.	"	6.00		
Nov.	30.	2/3 Exp. of careening			1,517.76
"	"	Cash		4.66	51.86
Dec.	2.	"		1.00	
"	20.	"		10.00	
"	"	Fittings		14.00	
"	22.	Cash		40.00	
"	31.	"		4.00	77.74
		Profits	514.33	203.20	
			$533.99	$302.46	$5,654.54
46	1898.				
	Jan.	31. Balance			$5,500.00
	"	" Cash		$6.00	
Feb.		28. "		3.50	
"		11. Docking	$29.40		
			$29.40	$9.50	$5,503.50
1897.					
July	15.	Our 2/3 of the cargo	$204.53		
Aug.	16.	Salted		$13.31	$13.31
"	"	1/3 on settlement	158.70	13.88	
Sept.	3.	" " "	170.76		
Nov.	30.	" " "		108.49	
Dec.	22.	" " "		79.32	
"	31.	" " "			154.56
		Loss		87.46	
		1/3 balance			5,500.00
			$533.99	$302.46	5,654.56
1898.					
Jan.	18.	Our 2/3 of the settlement		$209.08	
Feb.	8.	" " " " "		128.90	
"	28.	" " " " "		178.40	
Mar.	12.	" " " " "		91.32	
Apr.	14.	" " " " "		151.42	
				$759.12	
			$29.40	$9.50	$5,503.50

1898.				
Feb.	12.	Cash	7.00	
"	28.	Fittings		46.24
Mar.	14.	Cash	2.50	
"	31.	Hardware		3.15
		Cash	3.32	
April	30.	Hardware		5.18
"	"	Cash	1.07	

EXHIBIT "A."

At the execution of a commission for the examination of witnesses between the United States vs. "Antonio y Paco," Francisco Vilar, claimant, this paper writing, marked Exhibit "A," was produced and shown to the witness, Francisco Vilar, and by him deposed unto and subscribed at the time of his examination before me.

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EXHIBIT "B."

[Translated.]

[Extract from the storehouse book of the cargoes received by our fishing smack (two-thirds) "Antonio y Paco."]

		Live fish, Cherna—Pargo.	Salted,	receipts	total.	
1896.	Jan. 12	4,650	....	84	$228.	
	Feb. 7	6,325	....	4,800	293.	
	Mar. 7	7,500	....	1,600	340.	
	Apr. 6	4,172	....	1,400	194.88	
	" 28	6,092	210	1,490	273.28	
	May 25	7,000	960	370	351.82	
	June 25	7,421	750	1,240	374.14	
	July 20	7,964	195	....	332.21	
	Aug. 11	7,010	200	1,200	312.40	
	Sept. 16	9,368	283	206	398.16	
	Nov. 20	6,854	380	1,670	342.51	
	Dec. 21	14,354	....	690	584.	
						$4,024.40
1897.	Jan. 5	1,234	86	....	55.72	
	Feb. 5	9,509	....	1,800	425.36	
	Mar. 2	3,048	1,260	3,080	333.32	
	" 16	5,939	169	800	287.39	
	" 31	2,826	109	546	153.43	
	Apr. 22	5,747	332	....	328.27	
	" 30	2,341	1,700	1,000	298.90	
	May 24	9,033	.. .	1,000	504.23	
	June 18	7,653	315	400	454.89	
	July 9	7,251	340	1,270	750.54	
	Aug. 6	6,224	100	....	572.16	
	Sept. 3	4,763	1,667	....	628.71	
	Nov. 30	6,687	....	2,800	412.91	
	Dec. 23	3,433	1,200	1,575	301.48	
						$5,507.40

1898. Jan. 18.....	11,883	....	5,505	807.73	
Feb. 8.....	4,741	355	5,670	521.69	
" 28.....	11,271	....	3,375	675.94	
Mar. 12.....	2,903	2,164	1,315	347.86	
Apr. 19.....	6,975	....	6,800	602.87	
					$2,956.09
Total Spanish silver					$12,487.89

At the execution of a commission for the examination of witnesses between the United States vs. "Antonio y Paco," Francisco Vilar, claimant, this exhibited paper, numbered "Exhibit B," the foregoing, was produced and shown to Francisco Vilar, the witness, and by him deposed unto and subscribed by him at the time of his examination before me.

FRANCISCO VILAR.

JOSEPH A. SPRINGER,
Commissioner.

48 JUAN LLURIA Y PUJUDAS.

I. To the first interrogatory the said Juan Lluria y Pujadas answers and says:

My name is Juan Llauria y Pujadas; I am 75 years of age, and reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter, and builder by occupation. I am also maestre mayor de bahia, or harbor master of this port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place with the same business.

II. To the second interrogatory he answers and says:

The position of mestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as supplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the fishing smack "Antonio y Paco" to be worth on Mar. 1st, 1898, $9,000.00 Spanish gold, basing my apprais'ment of said vessel upon her special condition and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar Senra & Co. and Bengochea & Co., which I depose unto and produce and present to the commissioner to be filed with this declaration. Exhibit A.

Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

The position that I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her
49 inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLAURIA.

Answered under oath and subscribed before me this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Llauria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar Senra & Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March, 1898—

Do hereby certify that owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "Antonio y Paco," registered folio 2027, of 46 tons burden; wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sa'ling compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $9,000.00 Spanish gold.

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.]

(Signed) JUAN LLUARIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Antonio y Paco."

JOSEPH A. SPRINGER.

50

EXHIBIT A.

At the execution of a commission for the examination of witnesses between the United States vs. "Antonio y Paco," Francisco Vilar, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON.

I. To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish were sold at Havana during the said months at $10.00 (ten dollars) Spanish silver per quintal, and fresh fish were sold at the same price—$10 (ten dollars) silver per quintal. These were market rates.

III. To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7.00 (seven dollars) per quintal, silver, and salted $3.50 to $4.00 (three and one-half to four dollars) silver per quintal. These prices gradually rose, as soon as the blockade of the port was declared, to ten dollars silver per
51 quintal. Live or fresh fish were never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FR^co^ GANDON.

Answered under oath and subscribed before me this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ.

1. To the first interrogatory said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; am engaged in commerce, as a member of the firm of Vilar, Senra & Co.; that was my occupation at the time mentioned, in Apr. and May, 1898, and I resided then as now in this city at No. 2 Enna St.

2. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish, and salted fish, and thus was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10.00 silver per quintal of fresh or live fish, and salted fish were sold by my firm at $10.00 (ten dollars) Spanish gold per quintal.

3. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During the previous years the usual market price of live or fresh fish was $7.00 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars Spanish silver per quintal. On account of the blockades established by the United States about Apr. 21, the price of fish gradually rose to the prices I have quoted and also salted fish increased in price. I have given the
52 highest market prices, as the prices on all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me this the 25 day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

CITY OF HAVANA, *Island of Cuba.*

Be it remembered, that on the days and years within mentioned personally came before me the undersigned, Messrs. Francisco Vilar, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said

days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down, and read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am famil/iar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana, this 29th day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

54 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

62 Q. "Antonio y Paco," this vessel is valued on the first of January by the present owner at eight thousand two hundred and fifty dollars; state from your present recollection of her condition whether or not you would consider that a fair valuation.

A. I do not; I consider it excessive.

Q. What would you say was a fair price for her?

A. Taking into consideration the prices the boats sold for that were taken into Havana I would consider thirty-five hundred dollars a fair price for that vessel; I make this answer, believing that this vessel was formerly the "Emma Lowe."

Q. Have you any knowledge of what it cost to build the "Emma Lowe," in Key West?

A. My impression is that John Lowe said she cost him five thousand dollars, or it may have been a little more than that. After several years he sold her for thirty-five hundred dollars.

Q. Did he sell her on account of depreciation or on account of the tariff on fish business?

A. I assume that it was on account of the fish tariff.

* * * * * * *

73 WILLIAM D. CASH, a witness in behalf of the United States, being first duly cautioned and sworn, testified as follows:

* * * * * * *

74 Q. Do you know the fishing smacks down as the "Poder de Dios" and the "Antonio y Paco?"

A. Yes, sir; I knew these two as sold.

Q. Did you, or the firm of which you were a member, purchase the smacks just named by me?

A. The firm of Cash & Curry purchased the smacks "Antonio y Paco" and "Poder de Dios."

Q. At what prices?

A. "Antonio y Paco," $1,910, and the "Poder de Dios," $1,010.

Q. Did you, prior to the purchase or subsequently, ever make an examination of said vessel for said firm?

A. A few days prior to the sale, Mr. Curry and myself went on board of these smacks, made an examination as to their condition, and what we thought was their value for purchase.

Q. State what you found to be the condition of said vessels from your examination.

A. From examination we found that the two vessels were in a very fair condition; one of them, the "Antonio y Paco," was of more value than the "Poder de Dios;" then we determined when the sale came off what prices we would pay for the one and the other.

Q. From your knowledge of the values of sailing vessels, would you say that the prices paid by you for said vessels, respectively, were the fair purchase prices?

A. We concluded, at least we set a price that we thought each one was worth, and at the time of the sale probably the whole brought less than we expected to pay for them as a matter of speculation if the fishing business opened to them.

75 Q. Then, I understand you to say that you paid approximately the prices which, upon examination, you had concluded would be fair purchase prices for your purposes?

A. Over, either for speculation or put them into the business.

Q. Did you sell those vessels?

A. We sold them.

Q. At what prices?

A. We sold the "Antonio y Paco" for $2,900, and we sold the "Poder de Dios" for $1,500.

Q. Do you know the amount expended for repairs on said vessels?

A. I do not know from memory, but can tell.

Q. From the books?

A. I can tell exactly from the books.

Q. Was there any competition at the sale of these vessels?

A. Yes; there was considerable competition.

Q. When you examined these vessels did you find that any repairs would be necessary to put them in proper condition for use of sailing?

A. To change the speculation we found that it would be necessary to make some repairs, but for matter of sailing we had not considered that proposition, whether we should repair them or not; if so, it would be necessary to make some repairs.

Q. Do you recollect the tonnage?

A. I do not know.

* * * * * * *

90 WILLIAM B. CURRY, a witness produced on behalf of the United States, being first duly sworn, deposes and says:

* * * * * * *

91 Q. Were you a member of the firm of Cash & Curry?

A. Yes, sir.

Q. Did you recollect the sales of the fishing smacks captured as prizes during the Spanish-American war?

A. Yes, sir.

Q. Do you recollect about when that was?

A. In 1898.

Q. Do you know the vessels bought by that firm?
A. Yes; the "Poder de Dios" and the "Antonio y Paco."
Q. What were the prices paid for them?
A. For the "Poder de Dios," $1,010.00, and for the "Antonio y Paco," $1,910.00.
Q. Did you make an examination of these vessels at or near the time of purchases?
A. Yes, sir.
Q. What was their condition?
A. The "Poder de Dios" was in a fair condition, and the other one, "Antonio y Paco," was in a good condition also.
Q. Were any repairs to these two vessels made by your firm?
A. There were no repairs made that I remember of.
Q. Were they not put in good condition before they were sold?
A. They were put on the ways, cleaned, and painted.
92 Q. Can you state about the cost of all these repairs?
A. No; unless I refer to the books of the store.
Q. Have you any idea?
A. No, sir.
Q. From your knowledge of the value of sailing vessels, what would you say was the value of these at the time you purchased them?
A. The "Poder de Dios," I suppose, was worth $2,800, and the "Antonio y Paco" was worth, according to the business conditions existing, she was worth not more than we paid for her. At that time we paid $1,910.00.
Q. What would you say was her full value?
A. She was worth about $4,000.00.
Q. Under the business conditions existing what was her value?
A. What we paid for her.

Cross-examination:

Q. Does the firm of Cash & Curry still own these vessels or are these vessels sold?
A. They are sold.
Q. When did they sell them?
A. A few months after the purchases of them.
Q. Why did they sell them?
A. On account of lack of employment for them.
Q. Why did you purchase these two vessels?
A. We purchased them—that is, under the impression that after the war was over that American vessels would be allowed to fish in Cuban ports, not having to pay a duty on fish more than vessels of other nationalities.
93 Q. How much did you get for the "Antonio y Paco?"
A. $2,900.00.
Q. How much for the "Poder de Dios?"
A. $1,500.00.
Q. Did you ever buy and sell fishing smacks?
A. No, sir.

Redirect examination:

Q. Were the vessels in small sailing vessels?

A. I traded in a small one about fifteen tons, as far as I can remember; the other was sixty-four tons, and other one owned was about one hundred seventeen tons.

* * * * * * *

102 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ANTONIO Y PACO" AND CARGO, FR'CO Vilar, claimant on behalf of owners and crew. } Prize No. 16.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$8,250.00	
Cargo, 150 kintals fish, at $5	750.00	
		$9,000.00
Interest on do., at 8% from date of capture, May 2d, 1898, to Nov. 2d, 1901		1,410.00
		10,410.00
Less proceeds already returned claimant		1,533.29
		8,876.71
And expenses of issuing commission and executing commission in Havana		31.75
Interest of $8,876.71, April 17th, 1900, to November 2d, 1901		1,094.84
Total		10,003.30

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me and the methods of arriving at the result above.

I also append my bill for services under said order and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

114 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building, in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ANTONIO Y PACO," ANGEL LOPEL, AND Vilar, Serra & Co., claimants.

An interlocutory decree having been entered on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein at the sum of $10,003.30, as will more fully appear from his report on file;

115 And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master as claimants of the vessel by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors: It is

Ordered, adjudged, and decreed that the claimants, Angel Lopez and Vilar Serra & Co., have, receive, and recover from the United States, the libelant herein, the sum of $10,003.30, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Antonio y Paco" and her cargo herein, together with the further sum of $25 costs and interest on

the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $493.32, making in all the sum of $10,521.62, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18809, S. Florida, D. C. U. S. Term No. 581. The United States, appellant, vs. The Fishing Smack "Antonio y Paco," Angel Lopez et al., claimants. Filed January 31, 1903.

O

CLERK'S COPY. 3643

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 582.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ENGRACIA," FRANCISCO GONZALES ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(13218.)

36432

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 582.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ENGRACIA," FRANCISCO GONZALES ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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In the Supreme Court of the United States, October term, 1902.

a THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ENGRACIA," FRANCISCO Gonzales et al., claimants. } No. 582.

Stipulation as to record.

It is hereby stipulated that the portion of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 29; "testimony in Havana," being claimants' testimony in full, pp. 40–48, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the middle of p. 54 and extending to the end of the first line on p. 55; the following portions of the "testimony in Key West," viz: An extract from the testi-

b mony of M. W. Curry, a Government witness, beginning at the top of p. 72 and extending to the end of the "cross-examination" on p. 73; an extract from the testimony of Jno. Lowe, a Government witness, beginning at the middle of p. 74 and extending to the end of the redirect examination on p. 77; the "commissioner's findings" on p. 96; the last paragraph of the final decree of the court below on p. 109.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General,
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18810, Supreme Court U. S., October term, 1902. Term No. 582, The United States, appt. vs. The Fishing Smack "Engracia," etc. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

29 United States district court, southern district of Florida.
Spanish Schr. "Engracia" Prize No. 13.

Clerk's statement.

Proceeds of sale deposited		$1,000.00
Paid fees prize commissioners and expense	$32.60	
Paid fees clerk	40.65	
Paid fees marshal and expenses	309.68	
		382.93
Paid claimant under decree of April 5th, 1900		617.07

Respectfully submitted.

E. O. LOCKE, *Clerk.*

(Indorsed:) United States vs. "Engracia." #13. Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

40 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"ENGRACIA," FRANCISCO GONZALES, CLAIMANT.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Francisco Gonzales, Juan Luria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Francisco Gonzales answers and says, as follows:

My name is Francisco Gonzales; I am 44 years of age; am a seamen; engaged in the fishing business; I reside now in Havana, and at the time mentioned—April and May, 1898—I resided in Casa Blanca.

To the second interrogatory he answers and says:

There were four owners of this vessel, of which I was one. Pablo Pereda, Manuel Gonzales, Manuel Granados, were the others. We held one-quarter interest each in her. The vessel was valued at $5,500 Spanish gold. I base my calculation on her valuation upon the price set on her in the bill of sale and cost of subsequent repairs.

To the third interrogatory he answers and says:

The vessel usually earned on an average 1½ to 1¾% on her capital every month—about 18% to 22% annually. I base this information upon the amount usually distributed among her owners for every trip.

41 To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez is the attorney in fact and duly authorized agent to represent the owners of the vessel.

To the fifth interrogatory he answers and says:

I have nothing to add here.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Engracia" about six or seven years. Her tonnage I believe to be 46 tons or thereabouts, net. She was built in the United States, but I can not state what part or when.

To the second cross-interrogatory he answers and says:

About five or six years ago we bought the vessel from Don Francisco Gandon, whose residence is in Casa Blanca.

To the third cross-interrogatory he answers and says:

We paid for the vessel in cash the sum of $4,500 gold. I paid my share, $1,125. Each of the owners also paid their shares and the vessel was sold to us by a public instrument of bill of sale.

To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

Always has been engaged in the fishing business.

To the sixth cross-interrogatory he answers and says:

The seamen were paid by a percentage of the vessel's earnings. First deducting 75 cts. per quintal for "cherna," and $1 per quintal for "pargo," as a benefit or allowance to the vessel, two-thirds of remainder went to the crew and one-third to vessel. From salted fish no deduction was made, but the proportion was paid out in the same manner.

42 To the seventh cross-interrogatory he answers and says:

The vessel made sometimes one trip per month and very seldom two. I can not answer from memory respecting the number of or other information asked for in this question. I have already stated the proportion of the cargo that was paid to seamen as compensation and what went to the vessel. I am willing to hold myself responsible for the payment to the seamen of any amount that may appear as due to them out of what may be paid in settlement of this suit.

To the eighth cross-interrogatory he answers and says:

No books were kept of the vessel's business; the business of each trip was liquidated at the moment.

To the ninth interrogatory he answers and says:

Pablo Pereda has always been her "patron," or master; he was master of the vessel at the time of her capture. He resides in Havana, but is more frequently at sea. The names of the seamen appear on the "rolls" or crew lists.

To the tenth cross-interrogatory he answers and says:

The vessel had been repaired on two occasions, during the four or three years previous to her capture; I can not specify with exactness the dates; the sums expended were, say, less than one thousand dollars each time, which were paid for proportionately among her owners. The repairs were made at the shipyard or "carinero" belonging to D. Ceferino Miranda. I do not remember well enough to be more particular, and we have never kept accounts or books of the vessel.

And further this deponent saith not.

FRANCISCO GONZALES.

Answered under oath and subscribed before me at Havana, this 29th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

43 JUAN LLURIA Y PUJADAS.

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes St., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as "suplente" or deputy for about 30 years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered

the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Engracia" to be worth, on March 1st, 1898, $5,500.00 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co., and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Engracia," to be filed for convenience with this declaration.

44 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port, in the case of each vessel, respecting her inspection, valuation, expense and repairs, etc., and such reports should be of record in the office of captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition they were in on the first day of March of this year,

Do hereby certify that, owing to the constant inspection which I make of said vessels in my official capacity, the fishing smack "Engracia," registered folio 2073, of 42 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat, with equipments, all in good condition, I appraise in the sum of $5,500.00 Spanish gold.

In testimony whereof, I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Engracia," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT A. At the execution of a commission for the examination of witnesses between the United States vs. "Engracia," Francisco Gonzales, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

46 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver, per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver, per qq. These were market rates.

To the third interrogatory he answers and says:

Before the blockade was declared, fresh fish was sold at $7 (seven dollars) silver, per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver, per quintal. These prices gradually rose as soon as the blockade of the port was declared, to $10 silver, per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast, via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana this 27th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

47 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish, and salted fish, and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh

fish was abundant and never was wanting in supply, because it was brought from Batabano. During previous years, the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish, from three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANT. SUAREZ.

Answered under oath and subscribed before me at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

48 CITY OF HABANA, *Island of Cuba.*

Be it remembered, that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Francisco Gonzales, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof, I have hereunto set my hand and affixed my seal at Habana, this the twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States District Court, Southern District of Florida. United States vs. Schr. "Engracia," Francisco Gonzales, claimant. Commission to take testimony. Filed Sept. 3, 1900. E. O. Locke, clerk.

* * * * * * *

49 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

54 Q. Did you sell the "Engracia?"

A. Yes, sir.

Q. What did she bring?

(Objected to as immaterial and irrelevant and not constituting a proper measure of damage.)

A. Sold for one thousand dollars.

The claimants to that vessel value her at five thousand five hundred dollars. From your present recollection of that vessel and her condition, state whether or not you consider that a fair valuation; and if not, what would you consider such?

(Objected to as immaterial and irrelevant as far as regards the value at Key West, and, further, on the ground of insufficient foundation having been laid for the question.)

A. I consider five thousand and five hundred dollars excessive, but can not recall the condition of the vessel sufficiently well to estimate her value at Key West further than the price realized at the sale.

Q. How much did she bring?

(Same objection.)

A. One thousand dollars.

Q. Did you consider the price that she brought at that time under her real value; and if so, how much?

55 (Same objection.)

A. I can not recall well enough.

* * * * * * *

71 Q. Owing to the fact that such sales are largely attended, did not the persons who attended these sales usually pay more or less for vessels of any kind that may be offered for sale?

A. Well, at the time of sale there is, of course, quite a large number of people gathered there. Some are lookers-on and some are bidders; it is pretty hard for me to tell whether they were bidders or lookers-on. At the time of bidding, I think, competition was pretty lively.

* * * * * * *

Mr. MILTON CURRY, a witness in behalf of the United States, being first duly sworn, testifies as follows:

* * * * * * *

72 Q. Do you know of the fishing smacks "Severita" and "Lola Engracia?"

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you, at or near the time of purchase, make examination of said vessels?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels, and the information I received was from the crew, who were on the vessel at the time of seizure.

Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

Q. What did you pay for said vessels?

A. $800.00 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the age of the vessels and previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing, in reference to their use?

A. I thought that under a change of Government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

73 Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00; the "Severita" for $3,000.00.

Q. After your purchases of them did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas and I put some repairs on them, I suppose between $50 or $100. I really don't know the estimate. The other repairs were ordinary, such as any other vessel requires in ordinary use, such as painting and etc.

Q. Did these vessels require all those ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked; I made the repairs on her.

Q. Was the "Severita" painted when you sold her, or any other repairs done outside?

A. Nothing that I know.

* * * * * * *

JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

* * * * * *

74 Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"

A. Yes, sir.

Q. Did you make an examination of those vessels at the sale?

A. No, sir.

Q. Did you purchase those vessels?

A. Yes, sir.

Q. What prices did you pay for them respectively?

A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."

Q. Upon what did you base your value?

A. I merely went to the auction on the day of sale out of curiosity, and when these vessels were offered I thought the prices reasonable and I purchased them.

Q. Did you examine them after the sale?

A. Yes.

Q. What did you find their condition to be?

A. Medium fair.

Q. Did you make any repairs on them?

A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.

75 Q. Did you sell them subsequently?

A. Yes, sir; the "Cuatro de Setiembre" was sold for $1,500 and the "Lola Engracia" for $2,000.

Q. At the time of the purchase by you, would you say, from the condition of the vessels, were the prices paid by you fair?

A. One of them I thought was fair.

Q. Which one?

A. The "Lola Engracia." The "Cuatro de Setiembre" was sold cheap.

Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?

A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?

A. I do not recollect. About the same time they were all sold to a party, or near the same time.

Q. All disposed of at the same time?

A. Yes, sir.

Q. Did you know how these two vessels were equipped, and what was their special equipment?

A. As fishing smacks.

Q. Did you know what was their dimensions when you bought them?

A. Not at the time I bought them.

Q. Whom did you sell them to?

A. To parties in Havana.

Q. Now, at the time of this public sale was there any demand for fishing smacks at this port?

A. I don't think there was.

76 Q. What did you base your estimate of the valuation of these two vessels on—your own knowledge or from information obtained from others?

A. One of the vessels I knew had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.

Q. Have you ever had fishing smacks built for yourself in Key West, and if so, what was about the cost of building such vessels?

A. I had two built—the "Emma Lowe" and "City of Havana"—each cost me about $10,000.

Q. What was their tonnage?

A. 49 tons.

Q. Was there any fishing-smack business on at the time of the sale?

A. There was not then.

Q. Mr. Lowe, for what purpose did you purchase these two vessels?

A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?

A. There were several bidders and a little competition.

Q. How soon after you purchased these vessels did you make your examination of them?

A. I went on board the same day and put them on the dock about a week afterwards.

Q. Do you recollect the tonnage, approximately?

A. The "Cuatro de Setiembre," 29 tons, and the "Lola Engracia," 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or

twenty years old; the "Cuatro de Setiembre," I don't know her age; I should judge she was about ten years old.

77 Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten years, fifteen years, or twenty years?

(Objected to on the grounds that it has not been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

* * * * * * *

96 United States district court southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ENGRACIA" AND CARGO, FRCO. Gonzales, claimant, on behalf of owners and crew. } Prize No. 13.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. The "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$5,500.00	
Cargo 120 kintals fish, at $5	600.00	
		$6,100.00
Interest on do. at 8% from date of capture, April 28th, 1898, to Nov. 2d, 1901		1,713.40
		7,813.40
Less proceeds already returned claimant		617.07
		7,196.33
And expenses of issuing commission and executing commission in Havana		21.75
Total		7,218.08

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially Appointed.

Nov. 2d, 1901.

108 At a stated term of the United States district court for the southern district of Florida, held in the circuit court rooms in the Federal Building, in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ENGRACIA," FRANCISCO GONZALEZ, Manuel Gonzalez, Manuel Grandas, and Pablo Pereda, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein, at the sum of $7,218.08, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants, in addition to the dam-
109 ages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimants, Francisco Gonzalez, Manuel Gonzalez, Manuel Grandas, and Pablo Pereda have, receive, and recover from the United States, the libellant herein, the sum of $7,218.08, the amount of the compensatory damages suffered by the said claimants

by reason of the unlawful capture, condemnation, and sale of the said vessel "Engracia" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $355.96, making in all the sum of $7,609.04, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

110 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m. or as soon thereafter as counsel can be heard, a further hearing will be heard herein before the Honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree entered herein on or about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.
J. N. STRIPLING, Esq.,
U. S. Attorney for the Southern District of Florida.
To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed:) United States district court, southern district of Florida. The United States against the "Engracia." Notice of further hearing. Final decree and notice of settlement. Filed June 16, 1902. E. O. Locke, clerk. Service of a copy of the within notice of further hearing and of the within proposed final decree and notice of settlement thereof is admitted this ninth day of June, 1902. Henry M. Hoyt, Asst. Atty. Genl., U. S.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18810, S. Florida D. C. U. S. Term No. 582. The United States, appellant, vs. The Fishing Smack "Engracia," Francisco Gonzales et al., claimants. Filed January 31, 1903.

O

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 583.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "SEVERITO," DOMINGO TROCHA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(19811.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

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THE UNITED STATES, APPELLANT,

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a In the Supreme Court of the United States, October Term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "SEVERITO," DOMINGO Trocha et al., claimants. } No. 583.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 46; "testimony in Havana," being claimants' testimony in full, pp. 57–63 inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: beginning at the middle of p. 74 and ending on p. 74 after answer "I can't recall her condition
b well enough, etc."; the following portions of the "testimony in Key West," viz: an extract from the testimony of M. W. Curry, a Government witness, beginning at the middle of p. 90 and extending to the end of "cross examination" on p. 92; the "commissioner's findings" on p. 115; the last paragraph of the final decree of the court below on p. 128.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General,
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18811. Supreme Court U. S., October Term, 1902. Term No. 583. The United States, appt., *vs.* The Fishing Smack "Severito," etc. Stipulation to omit parts of record in printing. Filed March 6, 1903.

46 United States district court, southern district of Florida.

Spanish schooner "Severita," prize No. 28.

Clerk's statement.

Proceeds of sale deposited		$1,350.00
Paid fees prize commissioners	$38.87	
" " clerk	42.45	
" " marshal and expenses	263.72	
		345.04
" claimant under decree of April 5th, 1900		1,004.96

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Severita." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

57 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"SEVERITO," DOMINGO TROCHA, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Domingo Trocha answers and says as follows:

My name is Domingo Trocha; I am 54 years of age; am a merchant and reside at No. 31 Cristo St. in this city. I resided during the months of April and May, 1898, in the same place, and was then "gerente" or managing partner of the firm of Trocha & Co., Industria No. 48.

To the second interrogatory he answers and says:

The owners of the Spanish fishing smack "Severito" were Modesto Llanuge and myself, each one half interest; she was valued at $8,000, Spanish gold, at the time of her capture, and I base my valuation upon the facts that the purchase price was $3,000, Spanish gold, and repair and careenings made on her cost more than or about $4,000, and
58 labor, rigging, etc., some six hundred and odd dollars; therefore I place her valuation in round numbers at $8,000.

To the third interrogatory he answers and says:

The earnings of the vessel were liquidated or balanced yearly, and the result showed that she earned about 20 to 22% on the capital she represented. This was obtained in the usual manner by crediting gross products and deducting expenses, interest, etc.

To the fourth interrogatory he answers and says:

Yes; his name is Ramon Alverez, and he resides in Key West, Fla., and is also the attorney in fact for us.

To the fifth interrogatory he answers and says:

I do not know.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Severito" some six or seven years, but especially since the date of her purchase on August 19th, 1896; I do not remember her tonnage; she was built in the United States, but I can not state exactly when or where.

To the second cross-interrogatory he answers and says:

The one-half interest I have in the "Severito" was purchased by me on August 19th, 1896, of Don Modesto Llauge, who lived at No. 21 Penapobre st., in this city. He died on the 31st of January last, as I remember.

To the third cross-interrogatory he answers and says:

I paid for my half interest $1,500, Spanish gold, and afterwards my share of the expenses incurred on her for repairs, etc., as stated, which naturally increased her value to $8,000. These repairs and improvements were begun in October, 1896, and finish during January, 1897.

59 To the fourth cross-interrogatory he answers and says:

From the time I bought an interest in her until the time of her capture, she was engaged in the fishing business.

To the fifth cross-interrogatory he answers and says:

At no time during that period was she engaged in any other business.

To the sixth cross-interrogatory he answers and says:

The seamen were paid by a percentage of the vessel's earnings, thus calculated. After deducting from products of sales of cargo of each trip 75 cts. per quintal for "cherna" and one dollar per quintal for "pargo" or red snapper, as an allowance to the owners for ship's expenses, etc., two-thirds part of remainder went to crew, and the remaining one-third to the owners. Salted fish was disposed of in the same proportion, but without the allowance mentioned in the case of live or fresh fish. The "cherna" generally sold at $4.50 per quintal, and "pargo" at $7 Spanish silver. Salted fish, $10 per quintal.

To the seventh cross-interrogatory he answers and says:

I can not state exactly from memory as what books and memoranda respecting the operations and business of this vessel were kept by my partner, Don Modesto Llague, who is deceased, but I estimate her trips to have been on an average one monthly; the quantity of fish taken each trip was from 10,000 to 15,000 pounds; the amount realized was from $400 to $500 each trip, of which, as before stated, the owners received first the usual benefit or allowance and one-third, and the seamen the remaining two-thirds, according to the usual established agreement. In case of any amount being awarded in the settlement of this suit, of which any part may appear as due to the seamen or crew of the vessel,

60 I hereby agree and will be responsible for the liquidation and payment of the same to the said seamen.

To the eighth cross-interrogatory he answers and says:

As before stated, the books and memoranda of the business of this vessel were kept by my former partner, and have all been lost.

To the ninth cross-interrogatory he answers and says:

I can not state any of their names, but these data undoubtedly appear on the "rols" or crew lists of the vessel, which I understand have already been filed in court.

To the tenth interrogatory he answers and says:

The repairs made on said vessel were begun soon after her purchase, in October, and were finished in January, 1897; they consisted of a complete renovation, new well, planking, rigging, and sails. They were made by day labor at different times, but all under direction of master ship carpenter, Antonio Deus. I can not state the amount paid on each occasion, as I have no books to refer to, but the full amount is as herein previously stated. Her value was appraised as customary by the harbor master, D. Juan Lluria.

And further this deponent saith not.

DOMINGO TROCHE.

Answered under oath and subscribed before me, at Havana, this twenty-eighth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

61 JUAN LLURIA Y PUJADAS.

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas. I am 75 years of age, reside at Regla No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia, or harbormaster of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbormaster of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as "suplente" or deputy for about 30 years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Severito" to be worth, on March 1st, 1898, $8,000.00 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co., and Bengochea and Co., and filed with my declaration in the case of Antonio y Paco, and marked Exhibit "A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Severito," to be filed for convenience with this declaration.

62 Cross-interrogatories.

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbormaster of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, valuation, expense, and repairs, etc., and such reports should be of record in the office of captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty 8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

63 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing

smacks in the condition they were in on the first day of March of this year:

Do hereby certify, that owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "Severito," registered folio 2049, of 41 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns, and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $8,000.00, Spanish gold.

In testimony whereof, I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Severito," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A."—At the execution of a commission for the examination of witnesses between the United States vs. "Severito," Domingo Trocha, claimant, this paper, marked exhibit "A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.

JOSEPH A. SPRINGER,
Commissioner.

64 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade of the port was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

65 ANTONIO SUAREZ.

To the first interrogatory the said Antinio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce, as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna St.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish and salted fish, and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Batabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish, from three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st, the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

AN. SUAREZ.

Answered under oath and subscribed before me, at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

66 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at Habana, this the twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States district court southern district of Florida. United States vs. "Severito," Domingo Trocha, claimant. Commission. Filed Sept. 3, 1900. E. O. Locke, clerk.

67 * * * * * * *

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

74 Q. Captain, the "Severita" is valued at eight thousand dollars; state, from your present recollection of the boat and her condition, whether or not you consider that a fair valuation?

A. No, sir; I consider it excessive.

Q. What would you think a fair valuation?

A. I can't recall her condition well enough to base a valuation on it. I would say the eight thousand dollars excessive from her tonnage and her age. Her tonnage could be rebuilt in Key West for much less.

* * * * * * *

89 Mr. MILTON CURRY, a witness on behalf of the United States, being first duly sworn, testifies as follows:

* * * * * * *

90 Q. Do you know of the fishing smacks "Severita" and "Lola Engracia?"

A. Yes, sir.

Q. Did you purchase those two smacks?

A. I purchased them for William Curry's Sons.

Q. Are you a member of that firm?

A. Yes.

Q. Did you, at or near the time of purchase, make examination of said vessels?

A. No, sir.

Q. Upon what did you base your estimate upon said vessels?

A. Both vessels that I bought were owned in Key West a number of years before. The parties in my employ were familiar with the vessels, and the information I received was from the crew who were on the vessel at the time of seizure.

Q. From that crew did you obtain information as to the value of the vessels also?

A. Yes, sir.

91 Q. What did you pay for said vessels?

A. $800.00 for the "Lola" and $1,350.00 for the "Severita."

Q. From the information which you had and the knowledge of the

age of the vessels and previous use and condition, would you consider that fair prices for those vessels?

A. I consider it fair prices to pay for them on speculation.

Q. Did you buy them to lose money on them? What did you have in view at the time of purchasing in reference to their use?

A. I thought that under a change of government that the fishing business would be revived in supplying fish in Cuba, or thought that I would sell them back to parties in Cuba.

Q. Have they been sold since purchasing?

A. Yes.

Q. Do you know the prices?

A. I sold the "Lola" for $1,800.00, the "Severita" for $3,000.00.

Q. After your purchases of them did you put any repairs on them?

A. The "Lola" was wrecked at Tortugas, and I put some repairs on them, I suppose between $50 or $100. I really don't know the estimate. The other repairs were ordinary—such as any other vessel requires in ordinary use—such as painting and etc.

Q. Did these vessels require all these ordinary repairs after you bought them and before you could sell them again?

A. No; not necessary repairs, excepting the one that was wrecked. I made the repairs on her.

Q. Was the "Severita" painted when you sold her, or any other repairs done outside?

92 A. Nothing that I know.

Cross-examination:

Q. Mr. Curry, did you ever buy or sell any fishing smacks other than those you have testified to?

A. No, sir.

* * * * * * *

115 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "SEVERITA" AND CARGO, D. TROCHA, claimant on behalf of owners and crew. } Prize No. 28.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.

Value of vessel	$8,000.00	
Cargo, 50 kintals fish, at $5	250.00	
		$8,250.00
Interest on do. at 5 % from date of capture, May 9", 1898, to Nov. 2d, 1901		2,299.00
		$10,549.00
Less proceeds already returned claimant		1,004.26
And expenses of issuing commission and executing commission in Havana		21.75
Total		$9,566.49

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. S. LOCKE,
United States Commissioner, specially appointed.

Nov. 2d, 1901.

127 At a stated term of the United States district court for the southern district of Florida, held in the circuit court rooms in the Federal Building in the city of Jacksonville, on the 16th day of June, 1902.

Present, Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "SEVERITO," DOMINGO TROCHA AND MODISTO LLauge, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by

the claimants herein, at the sum of $9,566\frac{42}{100}$ as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
128 found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors it is

Odered, adjudged, and decreed, that the claimants, Domingo Trocha and Modisto Llange have, receive, and recover from the United States, the libellant herein, the sum of $9,566\frac{42}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel, "Severito," and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $471\frac{77}{100}$, making in all the sum of $10,063\frac{26}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

133 (Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18811 S. Florida D. C. U. S. Term No. 583. The United States, appellant, *vs.* The Fishing Smack "Severito," Domingo Trocha et al., claimants. Filed January 31", 1903.

O

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 584.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ANTONIO SUAREZ," VILAR, SERRA & COMPANY, CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.

(13812)

36450

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 584.

THE UNITED STATES, APPELLANT,

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THE FISHING SMACK "ANTONIO SUAREZ," VILAR, SERRA & COMPANY, CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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A In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ANTONIO SUAREZ," VILAR, Serra & Co., claimants. } No. 584.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 29; "testimony in Havana," being claimants' testimony in full, pp. 40–51, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the middle of p. 58 and ending on p. 59 after answer "I consider it excessive, etc.;" the following portions of the "testimony in Key West," viz, an extract from the testimony of William Reedy, a Government witness, beginning at the middle of p. 85 and extending to the end of the redirect examination on p. 88; the "commissioner's findings" on p. 100; the last paragraph of the final decree of the court below on p. 113.

B

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KUHN,
Proctors for Claimants.

C (Indorsed:) File No. 18812. Supreme Court U. S. October term, 1902. Term No. 584. The United States, appt., vs. The fishing smack "Antonio Suarez," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

29 District court of the United States, southern district of Florida.

Spanish schooner "Antonio Suarez," prize 22.

Clerk's statement.

Proceeds of sale deposited		$1,260.00
Paid fees prize commissioner and expenses	32.85	
" " clerk	40.50	
" " marshal and expenses	264.90	
		338.25
" claimant, under decree Apr. 5, 1900		$921.75

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed.)—United States vs. "Antonio Suarez." Clerk's statement. Filed May 16, 1900. E. O. Locke, clerk.

40 In the district court of the United States, southern district of Florida.

UNITED STATES,
vs.
"ANTONIO SUAREZ," FRANCISCO VILAR, claimant. } Prize.

By virtue of a commission from the honorable district court of the United States of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Francisco Vilar, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who, having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Francisco Vilar answers and says as follows:

My name is Francisco Vilar y Castelerio; I am 43 years of age; am a merchant and a member of the firm of Vilar, Senra & Co., No. 2 Enna St., where I resided during the time mentioned, April and May, 1898.

To the second interrogatory he answers and says:

The owners of the Spanish fishing smack "Antonio Suarez" at the time of her capture off the coast of Cuba, about May 3rd, 1898, by the U. S. Navy, during the late war between the United States and Spain, was my firm of Vilar, Senra & Co. The value of the vessel was then $10,000 Spanish gold, and this valuation is based upon the price paid for her by the firm when purchased in January, 1896.

41 To the third interrogatory he answers and says:

This vessel usually earned for her owners about 15 to 20% per annum on the amount of capital, or, say, an average of about $150 per month; but the exact amount of her earnings is stated in the books of the firm. These earnings are based upon the net products of her cargoes of live or fresh fish, and salted fish, and sales thereof.

To the fourth interrogatory he answers and says:

Yes; the agent of the owners of said vessel and the attorney in fact, duly authorized to represent them in the United States, is Mr. Ramon Alvarez, who resides in Key West, Florida.

To the fifth interrogatory he answers and says:

Our firm profits from the purchase of fish from the fishing vessels at the market rates and sale of same at retail rates. When this business was effected by the blockade against this port established by the United States naval forces, our firm suffered from the rise in the market prices and the scarcity of fish brought in by our vessels.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the Spanish fishing smack "Antonio Suarez" since the year 1884; I think her net tonnage is 34.74 tons, but I do not remember her gross tonnage; she was built in the United States, but I can not state exactly when or in what particular place she was built.

To the second cross-interrogatory he answers and says:

The "Antonio Suarez" was purchased or transferred to the present owners from the firm of C. Garcia & Co. in January, 1896; the said firm is dissolved, but the principal member, D. Celestino Garcia,
42 now resides at No. 111 Manrique St., in this city.

To the third cross interrogatory he answers and says:

The present owners of said vessel, and claimants, paid for her ten thousand dollars Spanish gold in the following manner: My firm, Vilar Senra & Co., is the successor of the firm of C. Garcia & Co., and upon its dissolution and liquidation took charge of its business as it stood, and the value or price of the "Antonio Suarez" appeared in the general balance as $10,000 Spanish gold, and was accepted at that price and transferred to us, and so entered in the books of the new firm. The said firm of C. Garcia & Co. was dissolved, and the successors thereto, my firm of Vilar Senra & Co., was constituted with several members of that firm and took over and assumed all the credits and obligations of the same, and continued the same business under the new style, according to duly recorded articles of copartnership.

To the fourth cross interrogatory he answers and says:

The vessel was engaged in the fishing business during all the time mentioned.

To the fifth cross interrogatory he answers and says:

She has not been engaged in any other business whatever.

To the sixth cross interrogatory he answers and says:

The seamen operating the vessel were compensated by receiving a percentage of her earnings, which were calculated as follows: The two-thirds part of the vessel's products, taking the live or fresh fish at the price of three and three-quarters of a dollar Spanish silver per quintal for "cherna," estimating the pargo or red grouper at the price of six dollars Spanish silver per quintal. That is to say, the price of cherna, although estimated at $3.75, sold at $4.50, leaving a benefit or allowance to
43 the owners of the vessel of 75 cts. per quintal, and from sales of pargo or red grouper credited at $6, but which generally obtained $7 per quintal, one dollar per quintal remained to benefit of owners. This benefit or allowance for vessel's expense of 75 cts. per q. for cherna and $1 for pargo was first deducted from the products of the catch, and of the remainder, crediting the cherna at $3.75 and the pargo at $6, two-thirds went to the crew. Salted fish was sold without any other deduction than one-third for the owners and the remaining two-thirds for the seamen or crew.

To the seventh cross interrogatory he answers and says:

I can not state exactly with respect to this vessel the number of trips made during the two years next preceding her capture, nor the dates of departure and entry of each trip, nor the quantity of fish and amount realized from sale of each cargo without special reference to the books of my firm. I have stated the proportion of the cargo that went to the owners and how much to seamen, and I desire to add that in case any amount is collected by me or my firm on account of this claim, and the settlement of this suit, which may appear as due or coming to the crew of said vessel, that we bind ourselves firmly and become responsible for the settlement, liquidation, and payment of the same to the said seamen.

To the eighth cross interrogatory he answers and says:

Yes; my firm kept books, and I produce the same with reference to the business of the vessel for exhibition to the commissioner, and file extracts made therefrom, showing the receipts and disbursements of the "Antonio Suarez" for the two years next preceding her capture, or, say, from January, 1896, to April, 1898. I also produce extracts showing the dates of arrival and quantity of fresh and salted fish of her
44 cargo for each trip, and the total amount realized from the sale of cargo from each trip.

To the ninth cross interrogatory he answers and says:

The name of the "patron" or master of the "Antonio Suarez" at the time of her capture, about the 3rd of May, 1898, was Augustin Carrillo. He is still employed in said vessel, and I know of no other residence he may have than on board. The names of her respective former "patrones" or masters, as well as of the sailors or fishermen employed for the period named, all appear in the respective "rolls" or crew lists of each trip, which, I believe, are already on file at Jacksonville, Fla.

To the tenth cross interrogatory he saith:

No extensive repairs were made on this vessel from the time she was purchased or transferred to our firm. The usual ordinary repairs of each trip as might be required in rigging sails, caulking, careening, painting, etc., were made and appear in account of the vessel's disbursements for sails, ironwork, rigging, and such supplies and in the extracts which I produce of her accounts, and refer to Exhibits "A" and "B."

And further this deponent saith not.

FRANCISCO VILAR.

Answered under oath and subscribed before me at Havana this 25th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

45

EXHIBIT B.

Extract from the store house books of the cargoes received by our fishing smack, "Antonio Suarez:"

	Live fish.		Salted.	Receipts.	Total.
	Cherna.	Pargo.			
1896.	*lbs.*	*lbs.*			
January 10	1,241	1,520	.....	$156.04	
Febr'y 7	10,260	.....	1,200	423.90	
March 24	1,682	400	1,400	95.28	
March 24	10,750	.....	1,485	453.85	
April 15	3,188	834	5,900	274.40	
May 20	6,739	779	.....	370.09	
June 19	7,816	725	860	380.59	
July 13	4,043	2,520	1,110	360.32	
August 8	8,445	262	760	367.54	
September 7	5,896	542	800	287.78	
November 7	8,546	350	3,000	433.84	
December 7	12,310	555	2,800	580.25	
December 28	2,888	598	.....	157.38	
					$4,341.26
1897.					
January 13	9,476	.....	1,150	399.54	
February 5	2,259	411	5,400	254.13	
March 16	12,440	.....	3,050	627.23	
April 14	4,688	450	5,500	549.02	
May 6	5,132	4,744	4,000	788.95	
May 22	7,279	319	1,650	457.16	
June 16	6,838	2,661	2,555	751.82	
July 12	7,257	755	6,654	1,050.87	
August 9	7,857	600	.....	777.80	
September 14	8,601	170	.....	794.49	
November 30	10,530	.....	800	505.85	
					$6,956.86
1898.					
January 30	5,661	1,892	.....	654.43	
February 28	8,405	.....	6,800	718.22	
March 31	9,237	1,662	6,730	868.50	
					$2,241.15
Total Spanish silver	.....	.....	.....	.....	$13,539.27

At the execution of a commission for the examination of witnesses between the United States *vs.* "Antonio Suarez," Francisco Vilar, claimant, the foregoing paper, numbered Exhibit B, was produced and shown

to Francisco Vilar, the witness, and by him deposed unto and subscribed by him at the time of his examination before me.

FRANCISCO VILAR.

JOSEPH A. SPRINGER,
Commissioner.

46 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de behia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Antonio Suarez" to be worth on March 1st, 1898, $9,000.00, Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co. and filed with my declaration in the case of "Antonio y Paco," and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Antonio Suarez," to be filed for convenience with this declaration.

Exhibit A.

47 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port, in case of each vessel respecting her inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

48 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing

smacks in the condition in which they were on the first day of March of this year,

Do hereby certify that, owing to the constant inspection which I make of such vessels in my official capacity, the fishing smack "Antonio Suarez," registered folio 2001, of 42 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $9,000.00 Spanish gold. * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Antonio Suarez."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution for the examination of witnesses between the United States vs. Antonio Suarez, Francisco Vilar, claimant, this paper, marked Exhibit "A," was produced and shown to th witness Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

49 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, April and May, 1898, and I resided then as now in this city at No. 2. Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fieh was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

51 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Francisco Vilar, Juan Lluria Y Panjadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reduced to writing in English, and read to them by me, the commissioner, in Spanish, with which language I am familiar, and by them ratified and subscribed

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States district court, southern district of Florida. United States vs. "Antonio Suarez," Francisco Vilar, claimant. Filed Sept. 3, 1900. E. O. Locke, clerk.

52 * * * * * * *

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

58 * * * * * * *

Q. The "Antonio Suarez." This vessel is valued at ten thousand dollars, Spanish gold; you sold the "Antonio Suarez" also?

A. Yes, sir.

Q. How much did she bring?

(Objected to as immaterial and irrelevant, and as not affording a proper measure of damages.)

A. Twelve hundred and sixty dollars she sold for.

Q. State whether or not you consider that a fair valuation.

(Objected to as immaterial and not affording a proper measure of damages.

To avoid a repetition of the objections, it is understood that the objections to the prices realized for the boats in Key West, is taken subject to the objection of counsel for the claimants, that said

59 objection is that the testimony is immaterial and irrelevant, and does not afford the proper measures of damages, and that the opinion of witness as to value of vessels in Key West is immaterial and irrelevant, and does not afford proper measure of damages, and that the proper foundation has not been laid for the formation of an expert opinion. It is understood that the same rulings and exceptions are deemed to apply in each case.)

A. I consider it excessive, considering her age, and everything; three thousand dollars at the outside.

* * * * * * *

85 * * * * * * *

WILLIAM REEDY, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. What is your name, age, residence, and occupation?

A. William Reedy; age, fifty years; residence, Key West; occupation, liquor dealer.

Q. Have you had opportunities for observing sailing vessels and becoming acquainted with the values thereof?

A. I have in years gone by; not so much as to their valuation.

Q. Did you know the vessel "Antonio Suarez," a fishing smack?

A. Yes.

Q. Did you purchase her by the sale of the United States marshal, and about when?

A. The summer of 1898, near the close of the war.

Q. Did you make an examination of the "Antonio Suarez" at

86 or near the time of your purchase?

A. I did.

Q. What did you pay for her?

A. I paid $1,260.

Q. Upon what did you base your estimate of your value upon her?

A. I simply bought her for a party to go in her.
Q. You bought it for the use of Cap. Frank Panier for what purpose?
A. For fishing purposes.
Q. Was it used for such?
A. Yes; she made one trip.
Q. Did you sell this vessel?
A. I did.
Q. Did you make any repairs on her after you purchased her?
A. I made some repairs on her bulwarks and——
Q. For what did you sell her?
A. I sold her for $2,300.
Q. Was that the best price you could get for her?
A. I guess it was. I charged $4,000, but that was all I could get for her.
Q. Did you make any efforts to sell her at higher prices?
A. There was no market for her that I knew of.
Q. Upon what did you base your value, $1,260?
A. Upon information that it was equal to that, and upon information furnished by Cap. Frank Panier for me.
Q. Was there any competition at this sale at which you purchased?
A. There was quite a number of bidders.
87 Q. Were you the highest bidder for this boat?
A. I think I was; it was knocked down to me.

Cross-examination:

Q. For what purposes did you purchase the "Antonio Suarez?"
A. For fishing purposes.
Q. Did you intend to fish in American or Cuban waters?
A. I intended to fish in American waters, but to sell in Havana was my intention when I bought the smack.
Q. Was the "Antonio Suarez" at the time you purchased her fully equipped for fishing purposes?
A. With the exceptions of a few lines; otherwise she was fully equipped.
Q. Was there at this time any fishing business in the port of Key West, or any other business?
A. Nothing more than our home industry for supplying the home market.
Q. Was there any demand at that time for vessels of this character of fishing smacks?
A. No; not that I am aware of.
Q. The fishing smack business between Key West and Cuba had been stopped for many years, had it not?
A. Yes, sir; quite a number of years.
Q. What was the value of the Spanish fishing smack "Antonio Suarez?" State what you think was the value.
A. I was given to understand that she cost $8,000.00 before the war. I would say this, that she appeared to me almost new; her timbers and planks were in first-class condition.
Q. Why did you sell this vessel?
A. For the simple reason that I did not propose to have her "eating her head off;" that is the reason why I sold the vessel. She had made

one trip; I sold her because it was a dead loss to keep her; in other words, she was an idle expense.

88 Redirect examination:

Q. Of your own knowledge, you did not know what this vessel cost?

A. Nothing more than what I heard from word of mouth that she was worth. I will say that she could not have been built here for that money. She was a better vessel than the one Mr. Lowe said he paid $10,000 for; that is, she was stronger; I mean that she was a better boat.

Q. But you have not knowledge enough of the values of vessels to rely on your own judgment, have you?

A. No, sir.

Q. You bought this vessel from the information of Mr. Frank Panier?

A. That went according to the prices; I did not propose, and bid $10,000.00.

Q. I mean that you relied on your own judgment, did you not?

A. I knew enough to know that the price of the vessel was really worth the money.

* * * * * * *

100 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ANTONIO SUAREZ" AND CARGO, Frco. Vilar, claimant on behalf of owners and crew. } Prize No. 22.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that, upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$9,000	
Cargo, 50 kintals fish, $5	250	
		$9,250.00
Interest on do. at 8% from date of capture, May 3d, 1898, to Nov. 2nd, 1901		2,590.00
		11,840.00
Less proceeds already returned claimant		921.75
		10,918.25
And expenses of issuing commission and executing commission in Havana		26.75
Total		10,945.00

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially appointed.

Nov. 2d, 1901.

112 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902.

Present, Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ANTONIO SUAREZ," VILAR, SERRA & CO., claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein.

And the said commissioner having, on or about November 2nd, 1901, reported the amount of compensatory damages to be recovered by the claimants herein at the sum of $\$10{,}945\frac{00}{100}$, as will more fully appear from his report on file.

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which
113 also awarded $25 costs to the claimants in addition to the damages found by the commissioner.

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902.

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to.

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimants, Vilar, Serra & Company, have received and recovered from the United States, the libelant herein, the sum of $10,945, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Antonio Suarez" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of said commissioner's report, to June 16, 1902, amounting to the sum of 538\frac{38}{100}$, making in all the sum of $11,508$\frac{38}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

114 (Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18812. S. Florida, D. C. U. S. Term No. 584. The United States, appellant, vs. The Fishing Smack "Antonio Suarez," Vilar, Serra & Company, claimants. Filed January 31, 1903.

O

CLERK'S COPY 30458

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 585.

THE UNITED STATES, APPELLANT.

vs.

THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 21, 1903.

(19812.)

36459

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 585.

THE UNITED STATES, APPELLANT,

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THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA et al., claimants. } No. 585.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 37; "testimony in Havana," being claimants' testimony in full, pp. 48–57, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the question "Did you sell the 'Fernandito?'" on p. 65, and ending on p. 66, after the answer "No, sir; I consider it excessive," etc.; the "commission-
b er's findings," on p. 105; the last paragraph of the final decree of the court below, on p. 118.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18813. Supreme Court U. S. October term, 1902. Term No. 585. The United States, appt., vs. The fishing smack "Ferdinandito," &c. Stipulation to omit parts of record in printing. Filed M'ch 6, 1903.

37 UNITED STATES
vs.
SCHR. "FERNANDITO." } Prize No. 26.

Statement.

Sale of vessel		$500.00
Pd. marshal	$265.27	
" prize commissioner	28.55	
" interpreter	5.00	
" clerk	40.65	339.47
Clerk on Asst. Tr. N. Y. favor of proctors for claimant		160.53

Feb. 21", 1900.

E. O. LOCKE, *Clerk.*

(Endorsed:) U. S. vs. Schr. "Fernandito." Statement of proceeds. Filed Feb. 21, 1900. E. O. Locke, clerk.

48 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"FERNANDITO," DOMINGO TROCHA, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused, Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and say as follows:

To the first interrogatory the said Domingo Trocha answers and says as follows:

My name is Domingo Trocha; am a merchant and reside at No. 31 Cristo st., in this city; I resided during the months of April and May, 1898, in the same place, and was then "gerente" or managing partner of the firm of Trocha and Co., Industria No. 48.

To the second interrogatory he answers and says:

The owners of the fishing smack "Fernandito" were Modesto Llague and myself; each one-half interest; she was valued at $5,500 when purchased and after certain repairs and improvements had been made on her. The vessel was then appraised by us in the said amount.

To the third interrogatory he answers and says:

This vessel was small but had a deep well, with considerable carrying capacity, and consequently earned considerable money. I estimate her earnings to have been 24 to 28 % per annum of her capital. This
49 information is obtained in the usual manner, by the annual balance, after deducting charges and expenses from the products of her cargoes.

To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez is the agent and attorney in fact and he resides in Key West, Florida.

To the fifth interrogatory he answers and says:

I have nothing particular to add.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I can not state how long I have known the "Fernandito," but particularly I have known her from the date of her purchase. I do not know the tonnage; the vessel was built in the United States, but I can not state when or where she was built.

To the second cross-interrogatory he answers and says:

The one-half interest I have in the "Fernandito" was purchased by me in Havana on August 19th, 1896, of Don Modesto Llague, who resided at No. 21 Penapobroe st. in this city. He died on the 31st of January last.

To the third cross-interrogatory he answers and says:

I paid in cash for my one-half the sum of $2,750, Spanish gold.

To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

The "Fernandito" had never been engaged in any other business.

To the sixth cross-interrogatory he answers and says:

The seamen operating the vessel were compensated by a percentage of her earnings, thus estimated: First there was deducted
50 from gross products of each trip 75 cts. per quintal for "cherna" and $1 per qq. for "pargo" or red grouper, as an allowance to the owner for ship's expenses, etc.; two-thirds of the remainder went to seamen, and the remaining one-third also to owners. Sales of the salted fish were divided up in the same proportion of third parts, without any allowance as in the case of live or fresh fish.

To the seventh cross-interrogatory he answers and says:

I can not remember what books and memoranda regarding the operations and business of this vessel were kept by my partner therein, D. Modesto Llague, who is deceased, but I estimate that she made one trip every month on the average, and captured on each trip from 10 to 15,000 lbs. of fresh fish, realizing therefrom from $400 to $500, of which, as stated, the owners received the first usual, the usual benefit or allowance, and one-third, the other two-thirds going to the seamen. In case any amount being awarded in the settlement of this suit, of which any part may appear as due to the seamen or crew of the ship and payable to them, I hereby agree and will be responsible for the liquidation and payment of same to the said seamen.

To the eighth interrogatory he answers and says:

The books and memoranda which relate to the business of this vessel were kept by my former partner and have all been lost.

To the ninth cross-interrogatory he answers and says:

I do not remember or know any of their names, as they were engaged by the patron or master. Their names no doubt appear on the "rols" or crew lists of the vessel, which I understand have already been filed in court.

51 To the tenth cross-interrogatory he answers and says:

No repairs to any considerable extent have been made on the "Fernandito" since her purchase, beyond painting, replacing cables, sails, or parts of rigging.

And further this deponent saith not.

DOMINGO TROCHE.

Answered under oath and subscribed before me, at Havana, this twenty-eighth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

52 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de bahia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as "suplente," or deputy, for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Fernandito" to be worth, on March 1st, 1898, $5,000.00 Spanish gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class; as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co., and filed with my declaration in the case of Antonio y Paco, and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Fernandito" to be filed for convenience with this declaration.

53 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, valuation, expense, and repairs, etc., and such reports should be of record in the office of captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

54 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition they were in on the first day of March of this year:

Do hereby certify, that owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "Fernandito," registered folio, 2063; of 26 tons burden; wooden hull; schooner rigged; rigging tight and staunch; sails and gearing complete; with the necessary iron ballast; capstan, two anchors, and chains; galley caboose and outfit; sailing compass, lanterns, and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,500.00 Spanish gold.

* * * * * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "Fernandito," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution of a commission for the examination of witnesses between the United States vs. "Fernandito," Domingo Trocha, claimant, this paper, marked Exhibit "A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

55 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes, I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal and salted at $3.50 to $4 (three and a half to four dollars silver per quintal). These prices gradually rose, as soon as the blockade of the port was declared, to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

56 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898; and I resided then, as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market prices

of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant, and never was wanting in supply, because it was brought from Batabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

AN. SUAREZ.

Answered under oath and subscribed before me, at Havana, this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

57 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Domingo Trocha, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal, at Habana, this the twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States vs. "Fernandito" Commission. Filed Sept. 3, 1900. E. O. Locke, clerk.

58 * * * * * * *

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

65 Q. Did you sell the "Fernandita"?
A. Yes, sir.
Q. How much did she bring?
A. Five hundred dollars.

Q. The "Fernandita" is valued at five thousand five hundred dollars by the present claimants. State whether you consider that excessive.

A. Very much so, sir.

Q. What would you consider a fair valuation for her?

A. I don't recall her condition well enough to place a valuation on her.

66 Q. You sold the Lola, did you?

A. Yes, sir.

Q. How much did she bring?

A. Eight hundred dollars.

Q. She is valued by the present claimants at five thousand dollars. State whether or not you consider that a fair valuation.

A. No, sir; I consider it excessive in the United States, in Florida, in Key West, because I know such a vessel could be built for considerably less money.

* * * * * * *

105 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "FERNANDITO" AND CARGO, D. Trocha, claimant on behalf of owners and crew. } Prize No. 26.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court, of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e—

Value of vessel	$5,500.00	
Cargo, 90 kintals fish, $5	450.00	
		$5,950.00
Interest on do @ 8 %, from date of capture, May 7th, 1898, to Nov. 2nd, 1901		1,660.72
		$7,610.72
Less proceeds already returned claimant		160.53
		$7,450.19
And expenses of issuing commission and executing commission in Havana		21.75
Total		$7,471.94

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the method of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

117 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902.

Present—Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "FERNANDITO," DOMINGO TROCHA AND Modesto Dange, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2nd, 1901, reported the amount of compensatory damages to be recovered by the claimants herein at the sum of $\$7,471\frac{24}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the

118 damages found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to—

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimants, Domingo Trocha and Modisto Dange, have received and recovered from the United States,

the libelant herein, the sum of $7,471\frac{94}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Fernandito" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of said commissioner's report, to June 16, 1902, amounting to the sum of $368\frac{48}{100}$, making in all the sum of $7,865\frac{42}{100}$ with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

119 SIRS: Please take notice that on June 16, 1902, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, a further hearing will be had herein before the honorable James W. Locke, United States district judge, at the United States court rooms, in Jacksonville, Fla., on the question whether the damages to be awarded to the claimants herein shall be charged against the United States or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree entered herein on about April 5, 1900, and that at the time and place stated a proposed final decree in the foregoing form will be presented for settlement and entry by the counsel for the claimants.

Dated June 6, 1902.

CONVERS & KIRLIN,
Proctors for Claimants.

To the ATTORNEY-GENERAL,
Washington, D. C.

J. N. STRIPLING, Esq.,
U. S. Attorney for the Southern District of Florida.

To Messrs. MCCAMMON & HAYDEN,
Counsel for the Naval Captors.

(Endorsed:) United States district court, southern district of Florida. The United States against The "Fernandito." Notice of further hearing. Final decree and notice of settlement. Filed Jun' 16, 1902. E. O. Locke, clerk. Service of a copy of the within of further hearing and of the within proposed final decree and notice of settlement thereof is admitted this ninth day of June, 1902. H. M. Hoyt, asst. atty. genl. U. S.

123 (Endorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18813. S. Florida D. C. U. S. Term No. 585. The United States, appellant, *vs.* The Fishing Smack "Fernandito," Dimingo Trocha et al., claimants. Filed January 31, 1903.

CLERK'S COPY 3646

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 586.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ORIENTE," MANUEL CARILLO, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 21, 1903.

(19814.)

30486

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 586.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ORIENTE," MANUEL CARILLO, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States, October term, 1892.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ORIENTE," MANUEL CARRILLO, claimant. } No. 586.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 35; "testimony in Havana," being claimants' testimony in full, pp. 46–58, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the third line

b at the bottom of p. 63 and extending to the middle of p. 64; the following portions of the "testimony in Key West," viz, an extract from the testimony of Alfred Atchison, a Government witness, beginning at the top of p. 90 and extending to the end of the redirect examination on p. 92; the "commissioner's findings," on p. 107; the last paragraph of the final decree of the court below, on p. 119.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KULIN,
Proctors for Claimants.

c (Indorsed:) File No., 18814. Supreme Court U. S. October term, 1902. Term No., 586. The United States, appt., vs. The fishing smack "Oriente," &c. Stipulation to omit parts of record in printing. Filed Mch 6, 1903.

35 United States district court, southern district of Florida.

Spanish sch. "Oriente," prize No. 20.

Clerk's statement.

Proceeds of sale deposited		$530.00
Paid fees prize commissioner and expense	$32.42	
" " clerk	40.65	
" " marshal and expenses	290.54	
		363.61
Paid claimant under decree Apr. 5, 1900		166.39

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) No. 20. United States vs. "Oriente." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

46 In the district court of the United States, southern district of Florida.

UNITED STATES
vs.
"ORIENTE," MANUEL CARRILLO, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Manuel Carrillo, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, deposes and answer as follows:

To the first interrogatory the said Manuel Carrillo answers and says:

My name is Manuel Carrillo. I am 48 years of age; am a seaman; reside at Havana when ashore. At the time enquired about, April and May, 1898, I was on board the Spanish fishing smack "Oriente," engaged in fishing.

To the second interrogatory he answers and says:

I was the sole owner of that vessel at the time mentioned. She was valued at $5,000 Spanish gold. I bought the vessel about 23 years previous to that date, in Key West, Fla., for the sum of $1,000 U. S. money, and afterwards repaired her in this port and changed her name to "Oriente" and flag to Spanish. This operation cost me about $500,
47 and the repairs then made about $1,000. About two years afterwards I careened her and made extensive repairs, which cost me about $5,000, and in two years' time after that I careened her again in the Sama shipyard, and the repairs cost me about $8,000. But although previous to the time of her capture I had been offered $6,000 for the vessel, she had been officially appraised at $5,000, and I state that sum as her value at the time mentioned, April and May, 1898.

To the third interrogatory he answers and says:

The vessel earned, according to her catch of each trip, which varied from 10 to 12,000 lbs. of live fish, and from 40 to 50 quintals of salt fish each trip, and earning as net products from $250 to $300 silver monthly. My means of information was due to my intervention as "patron" or master, as well as the owner of the vessel.

To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez, of Key West, Fla., is the attorney in fact and agent of the owner, duly authorized to represent me in this suit.

To the fifth interrogatory he answers and says:

I have nothing of special interest to add.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I have known the "Oriente" about 30 years; her net tonnage was 46.15; I do not remember her exact gross tonnage.

To the second cross-interrogatory he answers and says:

I bought the vessel of Mr. W. D. Cash, of Key West, Fla., some 25 years ago; I do not remember just how or where payment was made. Mr. Cash still resides in Key West.

48 To the third cross-interrogatory he answers and says:
I paid for her $1,000 U. S. money in cash.
To the fourth cross-interrogatory he answers and says:
She was engaged in the fishing business.
To the fifth cross-interrogatory he answers and says:
She was never engaged in any other business.
To the sixth cross-interrogatory he answers and says:
The seamen operating the vessel were compensated by a percentage of the earnings; about two-thirds of net product of cargo by each trip.
To the seventh cross-interrogatory he answers and says:
I can not state from memory the number of trips made, nor dates of departure and entry for two years next preceding her capture, nor the quantity of fish by each trip, and amount realized from sale of cargo, of which, however, something more than two-thirds went to crew and one-third to owner. Should any amount be awarded in settlement of this claim, by which it may appear that any part thereof belongs to the said seamen, I solemnly bind myself and hold myself responsible to make due payment thereof to the said crew.
To the eighth cross-interrogatory he answers and says:
I never kept any books whatever with reference to the business of the vessel.
To the ninth cross-interrogatory he answers and says:
I have always sailed in this vessel and held the command of her.
To the tenth cross-interrogatory he answers and says:
I have already stated that extensive repairs had been made on this vessel since I purchased her. But I can not remember all the dates nor particulars of the repairs.

49 I produce a deed of declaration and cancellation, dated August 28, 1862, to show that the balance of account with Messrs. Zulueta y Sobrinos, for expenses of repairs made by them on the vessel in accordance with contract of December 7th, 1877, was then $4,873.31 gold. I had already paid to said firm $5,000 for repairs, and was obliged to mortgage my vessel to them for the balance. Upon final payment the obligation was canceled and the vessel was free. I refer to "Exhibit A."
And further this deponent saith not.

his
MANUEL x CARRILLO.
mark.

Witness:
JOSEPH A. SPRINGER.

Answered under oath and subscribed before me at Havana this twenty-eighth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 EXHIBIT A.

(Copy.)

Numero 299. Escritura de Declaratoria y Cancelacion ortagada por la representacion de los Sres Zulueta y Sobrino en liquidacion a favor de D Manuel de Jesus Carrillo y Peraza. * * *

En la ciudad de la Habana a viente y ocho de Agosto de mil ochocientos ochenta y dos, ante mi Don Antonio Mendoza y Aranda Notario publico, * * * dicen.

Primero. Que la escritura de siete de Diciembre de mil ochocientos setenta y siete, * * * expresa el contrato celebrado entre los Sres Zulueta y Sobrino y el otro compareciente Carrillo, por cuyo contrato, dichos Sres Zulueta y Sobrino se obligaron a reparar el pailebot vevero nombrado "Oriente" de esta matricula, * * * y Carrillo se reconocio deudor de aquellos Sres de la cantidad de cuatro mil ochocientos setenta y tres pesos treinta y un centavos, oro, desto del importe de la citada reparacion o carena. * * *

Segundo. Que el mencionado Carrillo dueno del espusto pailbot vivero "Oriente," se obligo a pagar ese resto de cuatro mil ochocientos setenta y tres pesos treinta y un centavos, oro, en el termino de un ano, con mas el enteres de un doce por ciento annual; y para garantia al pago dejo afectado el antes dicho pailebot vivero, obligandose a no venderlo hasta que no estuvises completamente solventado esa suma y sus intereses.

Tercero. Que Carrillo ha pagada en diversas fechas y partidas los espuestos cuatro mil ochocientos setenta y tres pesos treinta y un centavos y todos sus intereses; * * * cancela en todas sus partes le espresada escritura de siete de Dicimbre de mil ochocientos setenta y siete, y deja absolutamente libre de responsibilidad al mencionado Carrillo; * * * Se tomo razon. Habana, 30 de Octubre de 1882. Augustin Delaville. (Hay un sello de la Capitania del Puerto.)

51 *Translation of the foregoing Exhibit A.*

Number 299. Deed of declaration and cancellation executed by the attorney of Messrs. Zulueta and Nephew, in liquidation, in favor of Manuel de Jesus Carrillo y Peraza. * * *

In the city of Habana, on the twenty-eighth day of August, eighteen hundred and eighty-two, before me, Antonio Mendoza y Aranda, notary public, * * * and declared:

First. That the instrument of the 7th of December, 1877, sets forth the agreement between Messrs. Zulueta and Nephew and the other appearer named, Carrillo, by which contract said Zulueta and Nephew bind themselves to repair the fishing smack called "Oriente," of this port, * * * and Carrillo confesses himself debtor to said parties in the sum of $4,873.31, balance of the amount of said repairs or careening.

Second. That the said Carrillo, owner of the said fishing smack "Oriente," binds himself to pay the remainder of $4,873.31 gold within one year, and interest at twelve per cent per annum, and as a guarantee for the payment he binds the said fishing smack and agrees not to sell her until the sum mentioned and interest shall be completely liquidated.

Third. That Carrillo has paid the different amounts and on divers dates the aforesaid $4,873.31 gold, and all the interest, which cancels in all its parts the aforesaid instrument of the 7th of December, 1877, and leaves him, the said Carrillo, absolutely freed from all responsibility.

Duly noted. Habana, October 30, 1882. Signed, Augustin Delaville. (Seal of the office of captain of the port.)

52 At the execution of a commission for the examination of witnesses between the United States vs. "Oriente," Manuel Carrillo, claimant, the foregoing paper, marked Exhibit "A," was produced and shown to the witness, Manuel Carrillo, and after comparison by me with the original notarial document exhibited, deposed unto by him as a true copy of parts of said document respecting to certain repairs made on said vessel, the "Oriente," and subscribed by him at the time of his examination before me, I further certify that the foregoing translation of same is true and faithful.

his
MANUEL x CARRILLO.
mark.

Witness:
JOSEPH A. SPRINGER.

JOSEPH A. SPRINGER,
Commissioner.

53 JUAN LLURIA Y PUJADAS:

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st.; and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de behia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Oriente" to be worth, on March 1st, 1898, $5,000.00 Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co., and filed with my declaration in the case of "Antonio y Paco," and marked Exhibit "A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "Oriente," to be filed for convenience with this declaration.

(Exhibit A.)

54 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port, in case of each vessel respecting her inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me, at Havana, this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

55 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March, of this year,

Do hereby certify that, owing to the constant inspection which I make of such vessels in my official capacity, the fishing smack "Oriente," registered folio 1999, of 45 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,000.00 Spanish gold. * * *

In testimony whereof I issue this certificate at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Oriente."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution for the examination of witnesses between the United States vs. "Oriente," Manuel Carrillo, claimant, this paper marked Exhibit "A" was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

56 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars), Spanish silver, per quintal, and fresh fish was sold at the same price, $10 (ten dollars), silver, per qq.

To the third interrogatory he answers and says:

Before the blockade was declared, fresh fish was sold at $7 (seven dollars), silver, per quintal, and salted at $3.50 to $4 (three and a half to

four dollars), silver, per quintal. These prices gradually rose as soon as the blockade was declared to $10, silver, per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana, this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

57 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co. That was my occupation at the time mentioned—April and May, 1898—and I resided then as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars), Spanish gold, per quintal.

To the third interrogatory he answers and says:

During all the period mentioned—April and May, 1898—live or fresh fish was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars), Spanish silver, per quintal, and for salted fish, three to four dollars, Spanish silver, per quintal. On account of the blockade established by the United States about April 21st, the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

58 CITY OF HABANA, *Island of Cuba:*

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Manuel Carrillo, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reducedto writing in English, and read to them by me, the commissioner, in Spanish after their having answered them in Spanish, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Indorsed:) U. S. district court, southern district of Florida. United States vs. Schooner "Oriente." Commission to take testimony. Filed Sept. 3rd, 1900. E. O. Locke, clerk.

* * * * * * *

59 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

63 Q. The "Oriente," according to this testimony, is forty-six and fifty one-hundredth tons. Do you remember that vessel?

A. No; I don't remember her particularly. She was one of
64 the largest.

Q. She was valued at five thousand dollars. State whether or not you consider that a fair valuation.

A. Considering her age, I consider it excessive.

Q. From your recollection of the age and condition of the boat, what would you consider a fair valuation?

(Same objection.)

A. It is a difficult matter for me to remember the condition the boat was in. I can't possibly place a valuation on account of not recalling her condition.

* * * * * * *

88 ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

* * * * * * *

90 Q. Did you at or about that time examine the "Oriente?"

A. Yes.

Q. Did you know her condition?

A. Yes.

Q. About what would you say she was worth?

A. I should judge she was worth about $3,500; I mean this conditionally. I mean that if the Cuban markets were open to us the vessel was worth more; I state if the Cuban markets were closed to us she was worth what you could sell her for.

Q. Cuban markets—for what do you mean?

A. For fishing business.

Q. Have the Cuban markets been open to the fishermen of this country since?

A. No; not that I know of.

Q. Then that vessel has not been worth the sum you stated since that time?

A. No; I don't suppose she was.
Q. Could you not give any idea what she is worth here?
A. I suppose about $2,500 or $3,000.

Cross-Examination:

Q. Mr. Atchison, what was your occupation in the early part of the year 1898?
A. I was deputy marshal.
91 Q. As deputy marshal, did you have the fishing smacks in your care or custody?
A. Yes, sir.
Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast, and sail?
A. I did, sir.
Q. What was the result?
(Objected to as not being proper cross-examination except in so far as the question refers to the two vessels referred to in the examination in chief.)
A. All were in generally good condition except one.
Q. Well, from the examination which you made of the "Oriente," what did you consider to be her value?
A. Well, I consider there are other considerations. If the market were free to us to sell in Cuba, the vessel would have been worth $2,500, to my opinion, not opened to put her on speculation.
Q. I understand you to say here that all the vessels were in a good condition?
A. Fair, as regular vessels are—as vessels are generally.
Q. Was there any fishing smack business carried on at Key West with Cuba at the time of this public sale?
A. No.
Q. Do you know whether there was any demand at that time in Key West for fishing smacks?
A. No.
Q. What become of all these vessels?
A. They were all sold back to the people in Havana.
Q. What value were they to the people in the United States if they could not use them in the fishing business?
92 A. Well, there were some other uses they could have been put to.
Q. Can you estimate the value?
A. No; because there is no business of that character going on between Cuba and the United States.
Q. Did you ever have any fishing smacks built for your own use?
A. No.

Redirect examination:

Q. Do you mean that the fish might be caught here be valueless to the smacks, except for shipment to Cuban ports?
A. I do.
Q. About how old were these smacks?
A. I do not know the age of any.

* * * * * * *

107 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ORIENTE" AND CARGO, MAN'L Carillo, claimant on behalf of owners and crew. } Prize No. 20.

Having been appointed by decree of said court, by request of parties to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of The U. S. vs. the "Lola" dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$5,000.00	
Cargo 90 kintals fish, at $5	450.00	
		$5,450.00
Interest on do. at 8 per cent from date of capture, May 5th, 1898, to Nov. 2d, 1901		1,522.36
		6,972.36
Less proceeds already returned claimant		166.39
		6,805.97
And expenses of issuing commission and executing commission in Havana		21.75
Total		6,827.72

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially Appointed.

Nov. 2d, 1901.

118 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building, in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ORIENTE," MANUEL CARILLO, CLAIMANT.

An interlocutory decree having been entered herein on or about April 5, 1900, directing, among other things, that the libel be dismissed, and

that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimant herein at the sum of $\$6{,}827\frac{72}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
119 found by the commissioner;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors as provided in the interlocutory decree hereinbefore referred to,

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimant, Manuel Carillo, have, receive, and recover from the United States, the libelant herein, the sum of $\$6{,}827\frac{72}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Oriente" and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16th, 1902, amounting to the sum of $\$336\frac{71}{100}$, making in all the sum of $\$7{,}189\frac{43}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No. 18814. S. Florida, D. C. U. S. Term No., 586. The United States, appellant, vs. The Fishing Smack "Oriente," Manuel Carillo, claimant. Filed January 31, 1903.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 587.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "ESPANA," MANUEL DEUS ET AL., CLAIMANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States, October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "ESPANA," MANUEL DEUS et al., claimants. } No. 587.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing-smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 30; "testimony in Havana," being claimants' testimony in full, pp. 41–50, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz, beginning at the end of the 3rd line at the top of p. 55 and ending at the middle of same p.; the
b following portions of the "testimony in Key West," viz, the testimony of Samuel Cates, a Government witness, beginning at the fourth line from the bottom of p. 64 and extending to the end of the redirect examination on p. 70; the "commissioner's findings," on p. 98; the last paragraph of the final decree of the court below, on p. 111.

It is also understood and agreed that respecting the parts of the record omitted counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No., 18815. Supreme Court, U. S. October term, 1902. Term No., 587. The United States, appt., vs. The Fishing Smack "Espana," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

30 District court of the United States, southern district of Florida.

Spanish schooner "España." Prize # 24.

Clerk's statement.

Proceeds of sale deposited		$1,310.00
Paid fees prize commissioners	$32.97	
" " clerk	41.20	
" " marshal & expenses	282.31	
		356.48
" claimant, under decree of Apr. 5th, 1900		953.52

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16th, 1900.

(Endorsed:) # 24. United States vs. "España." Clerk's statement. Filed, Apr. 16, 1900. E. O. Locke, clerk. (Ent. page 352 A.)

41 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"ESPAÑA," SANTIAGO DEUS, CLAIMANT. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Santiago Deus, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and answer as follows:

To the first interrogatory the said Santiago Deus answers and says as follows:

My name is Santiago Deus; I am 42 years of age; a merchant residing in Casa Blanca, Marina st., No. 12, and I resided there at the time mentioned, April and May, 1898.

To the second interrogatory he answers and says:

I was the sole owner of said vessel, the fishing smack "España," as I built her in 1884, in Regla. Her value at the time of her capture in May, 1898, was $9,000. About ten years ago I entered into partnership in said vessel with my uncle, Antonio Deus, and my brother Manuel, each one-third interest in her. I base my valuation of the vessel upon the fact that the vessel was about 14 years old, and cost $10,000
42 when built. Afterwards it received considerable repairs, in a new well, sails, rigging, etc., and consequently, notwithstanding her age, she was worth $9,000 when captured, Sp. gold.

To the third interrogatory he answers and says:

This vessel usually earned $300 to $350 each trip on 8 to $900 gross receipts of cargo, averaging about one trip per month. This information is obtained in the usual manner, by deducting expenses from the gross receipts of sales of cargo.

To the fourth interrogatory he answers and says:

Yes, Mr. Ramon Alvarez, of Key West, is the duly authorized agent and attorney in fact of the owners. He resides in Key West.

To the fifth interrogatory he answers and says:

I can only state that my vessel, the "España," was built especially for the fishing business; had a large well, and earned considerable money—more, in fact, in proportion to her size, than other vessels which had been adapted to the business and not built specially.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

Since the year 1884. She was 51 tons net and about 53 gross. I built her myself in 1884, in Regla.

To the second cross-interrogatory he answers and says:

I built her myself—that is, she was built under my direction and orders, and at my expense, by the master shipwright Don Juan Lluria.

To the third cross-interrogatory he answers and says:

It cost me to build her about $10,000 Spanish gold, and was appraised

in that amount. It was paid for in cash, in regular payments, as the building progressed.

43 To the fourth cross-interrogatory he answers and says:

In the fishing business.

To the fifth cross-interrogatory he answers and says:

Exclusively engaged in the fishing business.

To the sixth cross-interrogatory he answers and says:

The seamen operating the vessel were paid by a percentage of the earnings—two-thirds of the gross receipts from sales of her cargo of fresh and live fish and salted fish after deducting 75 cts. per quintal for "cherna" and $1 per quintal for "pargo" or grouper, which was an allowance made to owners of ship on account of her expenses.

To the seventh cross-interrogatory he answers and says:

I can only estimate that she made 22 to 25 trips during that period; I can not state the dates of the departure and entry of each of her trips; these appear, I believe, in the "rol's" or crew lists already filed in court; nor can I state the quantity of fish by each trip, but estimate same from 14 to 17,000 lbs. fresh or live fish, and of salted fish about 40 to 50 quintals; the average amount realized on each trip I estimate at $300 to $350 as the one-third which went to the owner with the before-mentioned allowance, and two-thirds to the seamen and fishermen. And I hereby bind myself, in case any payment be made in settlement of this suit, in which it shall appear that said seamen are interested, to liquidate and pay over to them their proportionate share of same.

To the eighth cross-interrogatory he answers and says:

Neither I or the parties interested with me kept any books with reference to the business of the vessel; the business of each trip was liquidated promptly at the time, and no books or memorada of such were kept or preserved.

44 To the ninth cross-interrogatory he answers and says:

The patron or master of the "Espana" has always been Bernardo Farina, who, when ashore, resides in Casa Blanca. I can not state the names of the seamen; they were always engaged by the patron, and their names undoubtedly appear in the "rol's," or crew lists, already filed in the court, as I understand.

To the tenth cross-interrogatory he answers and says:

There were considerable repairs made to the vessel, in increasing the size of the well, about seven or eight years ago. They were made under the direction of one of the vessel's owners, Antonio Deus, by ship carpenters engaged by him and paid daily wages. The repairs cost about $1,800.

And further this deponent saith not.

SANTIAGO DEUS.

Answered under oath and subscribed before me at Havana this 28th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

45 JUAN LLURIA Y PUJADAS.

To the first interrogatory said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter,

and builder by occupation. I am also maestro mayor de Bahia, or harbor master of this port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place, with same business.

To the second interrogatory he answers and says:

The position of ma'stro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente, or deputy, for about 30 years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "España" to be worth March 1st, 1898, $9,000 Span. gold, basing my appraisement of said vessel upon her special conditions, and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra & Co. and Bengochea & Co., and filed with my declaration in the case of "Antonio y Paco," and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the España, to be filed for convenience with this declaration.

Exhibit "A."

46 Cross-interrogatories.

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in the case of each vessel respecting her inspection, valuation, expense, and repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

47 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vila, Senra and Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition they were in on the first day of March of this year,

Do hereby certify that, owing to the constant inspection which I make of said vessels, in my official capacity, the fishing smack "España," registered folio 2049, of 54 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with the necessary iron ballast, capstan, two anchors and chains, galley, caboose and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $9,000 Spanish gold.

* * * * * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the foregoing official certificate referring to the vessel named in this commission, the "España," which certificate of appraisement is annexed to answers of above witness to commission in case of Antonio y Paco.

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution of a commission for the examination of witnesses between the United States vs. "España," Santiago Deus, claimant, this paper, marked "Exhibit A," was produced and shown to the witness, Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

48 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish was sold at the same price, $10 (ten dollars) silver per qq.

To the third interrogatory he answers and says:

Before the blockade was declared fresh fish was sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and a half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast, via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana, this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

49 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, in April and May, 1898, and I resided then, as now, in this city at No. 2 Enna St.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish, and salted fish, and was familiar with the market

prices of fresh and salted fish in Havana during said months of April and May, 1898. The prices at that time were $10 (ten dollars) silver per quintal of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Batabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States, about April 21st, the price of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

50 CITY OF HABANA, ISLAND OF CUBA.

Be it remembered, that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Santiago Deus, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana, this twenty-ninth day of August, 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) U. S. district court, southern district of Florida. The United States vs. "España," Santiago Deus, claimant. Commission. The execution of the within commission appears in certain schedules hereto annexed. Havana, August 29th, 1900. Joseph A. Springer, commissioner. Filed Sep. 3, 1900. E. O. Locke, clerk.

* * * * * * *

51 John F. Horr, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

55 Q. You sold the "Espana," didn't you?
A. Yes, sir.

Q. This vessel is valued by the owners at nine thousand dollars. State from your present knowledge of her condition whether you consider that excessive and what you consider a fair valuation.

(Same objection.)

A. I consider nine thousand dollars excessive valuation. She was a Cuban-built boat, at that time fourteen years of age, and I consider three thousand or thirty-five hundred dollars a fair valuation.

Q. How much did she sell for when sold by you?

(Same objection.)

A. Thirteen hundred and ten dollars.

* * * * * * *

64 SAMUEL CATES, Esq., a witness produced on behalf of the United States, being first duly sworn, deposes and says:

Q. State your name, age, place of residence, and occupation.

A. Samuel Cates; age, 54 years; live up in James street, city of Key West; occupation, the sponge business.

65 Q. How long have you been engaged in the sponge business?

A. I guess about 20 years.

Q. Are you familiar with the selling of vessels and the value thereof?

A. Yes, sir; I know all about it.

Q. What opportunities have you had for observing the selling of vessels and becoming acquainted with the values thereof?

A. Well, in buying and selling, and etc.

Q. You have traded in vessels for some years?

A. Yes, sir; I have.

Q. Do you know the fishing smack "España," seized as prize in the late war?

A. Yes, sir.

Q. Did you make an examination of that boat?

A. I did after I bought it.

Q. About when was that?

A. I could not answer.

Q. Approximately, when?

A. Somewhere about the time the Spanish-American war was declared I bought it and examined it.

Q. You say you bought the "España?"

A. Yes, sir.

Q. What did you pay for her?

A. I paid $1,310.00 for her.

Q. What was the result of your examination of said vessel?

A. Well, in examining her I found that the vessel was in a pretty bad condition in the hull and some of her sails.

Q. Was the price you paid for her a fair value?

66 A. Well, no, sir; I didn't think it was a fair value. I thought the vessel was worth more than she brought. Well, I offered to sell it to the owners for $3,500; they would not give that much money.

Q. What did you sell it for?

A. For $2,500.

Q. About what was her tonnage?

A. Was 53 tons when I bought it, afterwards she was cut down some and remeasured to 48 tons.

Q. What repairs did you put on her before selling her?
A. Well, I don't know about how much repairs I put on her.
Q. State what they were.
A. Well, I had some pieces put into her planks and I had some timbers put on her bow. I think that was about all the repairs I had done.
Q. You say her hull was in a fair condition?
A. Yes, sir.
Q. Under what circumstances was this vessel purchased by you?
A. Well, she was taken by ships, I believe, and brought here and she was sold by the Government, and I bought her at public auction.
Q. Was there much bidding at this?
A. Yes, sir; there was considerable bidding.
Q. Were there many persons present?
A. There were a considerable number of persons present at the time of the auction.
Q. Were those persons interested in vessels of this class?
A. There were some in that business and there were lots who were not.
Q. This you say was at the sale made by the marshal at public auction.
A. Yes, sir.
67 Q. That is when you bought this vessel?
A. Yes, sir.
Q. Did you at that time examine the vessel called the "Oriente?"
A. No, sir; I did not.
Q. About how old was this vessel when you purchased her?
A. I could not say.
Q. What price did you pay for her?
A. $1,310.
Q. And you sold her for $2,500?
A. Yes, sir.
Q. About what did the repairs cost and did you do them yourself?
A. No, sir. Well, all the repairs I had done to her cost from $150 to $200.
Q. Would you say that she was in much better shape after you repaired her than before?
A. Yes, sir; I say she was in a little better shape than when I bought her.
Q. Would you say such repairs increased her value materially?
A. It increased the value a little.
Q. About how much would you say?
A. Well, I say, according to what I had done, about $150 or $200.
Q. No more than the actual amount you expended on her?
A. No, sir.
Q. Did you know if anyone else than yourself bid on said vessel?
A. Yes; several bid on her.
Q. Were you the highest bidder?
A. Yes, sir.
68 Cross-examination:
Q. What kind of vessel was this and what was she employed in?

A. In the smack business.

Q. When you say she was employed in the smack business, do you mean to say the fishing smack business?

A. Yes, sir.

Q. Have you ever been engaged in buying and selling fishing smacks?

A. No, sir.

Q. Do you know, Mr. Cates, when the tonnage of the "Espana" was reduced here from 58 tons to 48 tons?

A. It was somewhere about that time; I can not remember rightly when she was taken and brought here.

Q. When was she remeasured?

A. When she was measured here she was 48 tons; I don't know anything about that part of it.

Q. Do you know whether there is any difference between the Spanish rule of measuring vessels and the American rule?

A. No; I don't know that there is any difference.

Q. Had this vessel, the "Espana," been cut or reduced before she was measured at Key West by the custom-house authorities?

A. No; she was measured before she was cut down.

Q. Was there any fishing smacks business being carried on between the United States and Cuba at the time or about the time you purchased this vessel?

A. No, sir; there were no smacks here at this time, excepting the smack we bought.

Q. At the time of that sale of which you have spoken, was there any demand at Key West for fishing smacks?

A. Well, at that time when we bought those smacks of course
69 we thought there would be a demand for them, but there was none up to that present time.

Q. Is it not a fact, Mr. Cates, when vessels are sold here at public auction, are there not always a large crowd present?

A. Yes, sir; there most generally is.

Q. To whom did you sell that vessel?

A. I sold it to the same owner that it belonged to before.

Q. What did you get for her?

A. I got $2,500.

Q. Why did you sell it?

A. Because I had no use for it.

Q. Did you buy her for speculation?

A. No, sir; I did not buy her for speculation; I bought her with the intention of keeping her.

Redirect examination:

Q. You said there was no demand for such vessels; you also said there was quite a number of bidders.

A. Yes, sir.

Q. Please explain.

A. At that time, I can explain, that before these smacks had come here we had no demand for them, but when we bought these smacks we bought them with the intention of keeping and using them here. It happened to be there was no demand in that business, so afterwards we could not do anything with them and sold them.

Q. Then your intention to use them for fishing purposes did create a demand for such vessels?

A. Yes, sir; at that time.

Q. By that time, do you mean at the time of your purchase?

A. Yes, sir.

70 Q. Was the war still going on at the time of the purchase?

A. No, sir; the war was over.

Q. You said, in cross-examination, that there is always a crowd present in Key West at the selling of vessels; is that not due to the fact that a large number of people in Key West sell and trade in sailing vessels?

A. Yes, sir.

* * * * * * *

98 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "ESPAÑA" AND CARGO, SANTIAGO DEUS, claimant on behalf of owners and crew. } Prize No. 24.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$9,000.00	
Cargo, 180 kintals fish, @ $5	900.00	
		$9,900.00
Interest on do., @ 8% from date of capture, May 6th, 1898, to Nov. 2d, 1901		2,769.46
		$12,669.46
Less proceeds already returned claimant		953.52
		$11,715.94
And expenses of issuing commission and executing commission in Havana		21.75
Total		$11,737.69

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

110 At a stated term of the United States district court for the southern district of Florida, held in the circuit court rooms in the Federal building in the city of Jacksonville on the 16th day of June, 1902.

Present—Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "ESPAÑA," MANUEL DEUS, SANTIAGO DEUS, & Antonio Deus, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimants, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court, with all convenient speed, the amount of the compensatory damages to be recovered by the claimants herein;

And the said commissioner having, on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimants herein at the sum of $\$11,737\frac{69}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
111 found by the commissioner;

And the owners of the said vessel, at the time of her capture, having been substituted in place of her master, as claimants of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors provided in the interlocutory decree hereinbefore referred to:

Now, on motion of Convers & Kirlin, proctors for the claimants, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimants, Manuel Deus, Santiago Deus, and Antonio Deus, have, receive, and recover from the United States, the libellant herein, the sum of $\$11,737\frac{69}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "España"

and her cargo herein, together within the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16, 1902, amounting to the sum of $578\frac{84}{100}$, making in all the sum of $12,341\frac{53}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Endorsement on cover): Office Supreme Court of U. S. Received Oct. 7, 1902. File No., 18815, S. Florida, D. C. U. S. Term No., 587. The United States, appellant, vs. The fishing smack "España," Manuel Deus et al. claimants. Filed January 31, 1903.

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3648

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, No. 1902.

No. 588.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "CUATRO DE SETIEMBRE," LEONARDO BUNUEL, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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a In the Supreme Court of the United States. October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "QUATRO DE SETIEMBRE," Leonardo Bunuel, claimant. } No. 588.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed; and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 27; "testimony in Havana," being claimants' testimony in full, pp. 37–45, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the top of p. 47 and extending to the end of the first three lines on p. 50; the following portions of the "testimony in Key West," viz: An extract from the
b testimony of John Lowe, a Government witness, beginning at the top of p. 77 and extending to the end of the redirect examination on p. 80; the "commissioner's findings" on p. 99; the last paragraph of the final decree of the court below on p. 114.

It is also understood and agreed that respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

Washington, March 3, 1903.

c (Indorsed:) File No. 18816. Supreme Court U. S. Octobre term, 1902. Term No. 588. The United States appt. vs. The fishing smack "Cuatro de Setiembre," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

27 United States district court, southern district of Florida.

Spanish sch. "Quatro de Setiembre," prize No. 19.

Proceeds of sale deposited		$470.00
Paid fees prize commissioner & expenses	$30.87	
" " clerk	40.00	
" " marshal & expenses	295.46	
		366.33
Paid claimant under decree Apr. 5, 1900		103.67

Respectfully submitted.

E. O. LOCKE, *Clerk.*

Apr. 16, 1900.

(Endorsed:) United States vs. "Quatro de Setiembre." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

37 In the district court of the United States for the southern district of Florida.

THE UNITED STATES
vs.
"4 DE SEPTEMBRE" SEGUNDO CASTELEIRO, claimant. } Prize.

By virtue of a commission from the honorable the district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Segundo Casteleiro, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross interrogatories to said commission attached, depose and answers as follows:

I. To the first interrogatory the said Segundo Casteleiro answers and says:

My name is Segundo Casteleiro; I am 24 years of age; engaged in commerce; residing in this city; and resided there also during April and May, 1898.

II. To the second interrogatory he answers and says:

Don Leonardo Bunuel was the sole owner of the fishing smack "4 Septembre" at that time. I was then his attorney in fact and am now still. The vessel was valued at five thousand dollars Spanish gold; that was the price at which Bunuel purchased her.

III. To the third interrogatory he answers and says:

I can not state how much said vessel usually earned for her owner per month, but annually the earnings were estimated at 20 per cent net on the amount of her capital.

38 IV. To the fourth interrogatory he answers and says:

Yes; Mr. Ramon Alvarez, of Key West, Fla., is the agent and attorney in fact of the owner of said vessel.

V. To the fifth interrogatory he answers and says:

I have nothing special to add to this statement.

Cross-interrogatories:

I. To the first cross-interrogatory he answers and says:

I have known said vessel for about nine years. Her gross tonnage was 33.15, net 31.5. The vessel was formerly the "Maria Madelena," and I believe was built in Cuba, but can not state what year. During a hurricane on the 4th of September, 1888, at Mariel, she was nearly destroyed, but being brought to Havana, extensive repairs were made on her, and she was named "4 de Septembre."

II. To the second cross-interrogatory he answers and says:

She was purchased by Don Leonardo Bunuel, my grantor, in this port in August, 1896—was purchased of Don Laureano Cajigal, who now resides in Santander, Spain.

III. To the third cross-interrogatory he answers and says:

He paid $5,000.00, Spanish gold, in cash for her.

IV. To the fourth cross-interrogatory he answers and says:

The vessel was engaged in the fishing business from the time of her purchase until the time of her capture as a prize.

V. To the fifth cross-interrogatory he answers and says:

She has never been engaged in any other business.

39 VI. To the sixth cross-interrogatory he answers and says:

The seamen were compensated by a percentage of the vessel's earnings: two-thirds of the receipts of sales of live or fresh fish cargoes, after deducting, as an allowance to ship owners, 75 cts. per quintal for "cherna" and one dollar per quintal for "pargo." No allowance was made on salted fish.

VII. To the seventh cross-interrogatory he answers and says:

The vessel made about thirty trips during that time. I can not give the exact dates of departure or entry, nor the quantity of fish taken each trip; this I can only estimate from my recollection to have been as 8,000 lbs. fresh fish, and some salted, and realized about $500 to $600 each trip, of which one-third, with a certain allowance already explained, went to the owner and two-thirds to the seamen. I will here declare that should any award be made in the settlement of this suit, of which said seamen may be entitled to a part, that I will become responsible for the settlement, liquidation, or payment of same to the seamen.

VIII. To the eighth cross-interrogatory he answers and says:

No books of accounts with reference to the business of this vessel were ever kept, therefore I can not produce any.

IX. To the ninth cross-interrogatory he answers and says:

The name of the patron or master of the vessel at the time of her capture was Manuel Paz. He had been her patron or master from the time of her purchase. I can not give the names of the seamen, but they appear on the roles or crew lists filed in the United States.

X. To the tenth cross-interrogatory he answers and says:

No repairs to any great extent have been made on this vessel since her purchase, only the usual required painting, replacing of sails, rigging, cables, etc. Her hull has not been touched.

40 And further this deponent sayeth not.

SEGUNDO CASTELEIRO.

Answered under oath and subscribed before me at Havana this 29 day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

41 JUAN LLURIA Y PUJADAS.

I. To the first interrogatory the said Juan Lluria Pujadas answers and says as follows:

My name is Juan Lluria y Pujadas; I am 75 years of age; reside at Regla, No. 2 Botes st., and am a shipwright, a master ship carpenter, and builder by occupation. I am also maestro mayor de bahia, or harbor master of this port. At the time mentioned, April and May, 1898, and prior thereto, I resided at the same place and with the same business.

II. To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government, to which I was appointed in 1897, having served as suplente or deputy for about thirty years. It was my duty, by virtue of my position, to inspect and examine and value all vessels that entered

the harbor of Havana, and especially all vessels that made repairs in this port. I have inspected and valued the fishing smack "4 de Septiembre" to be worth on the first of March, 1898, $5,000 Spanish gold. Basing my appraisement of said vessel upon her special conditions, and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels made at the request of Messrs. Vilar, Senra & Co., Bengochea & Co., and filed with my declaration in the case of "Antonio y Paco" and marked "Exhibit A," to which I refer, and of which I now produce a copy (translated) of the part thereof referring to the "4 de Septiembre," to be filed for convenience with this declaration, "Exhibit A."

42 Cross-interrogatories:

I. X. To the first cross-interrogatory he answers and says:

The position that I held was that of maestro mayor de bahia or harbor master of the port of Havana.

II. X. To the second cross-interrogatory he answers and says:

No, I had no official records to keep, but made reports to the captain of the port, in the case of each vessel, respecting her inspection, valuation, expense of repairing, etc.; and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this 28th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

[Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra & Co. and Bengochea & Co. to appraise the value of their respective fishing smacks in the condition in which they were in the first day of March, of this year:

Do hereby certify, that owing to the constant inspection which I make of these vessels in my official capacity, the fishing smack "4 de Septiembre" registered folio 2104, of 30 tons burden, wooden hull, schooner rigged, rigging tight and staunch, sails and gearing complete, with necessary iron ballast; capstan, two anchors and chains; galley caboose and outfit; sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $5,000 Spanish gold.

* * * * * * *

In testimony whereof I have issued this certificate at Havana, the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

43 I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement annexed to answers of above witness to commission in the case of "Antonio y Paco," and referring to the vessel named in this Commission. the "4 de Septeimbre."

JOSEPH A. SPRINGER,
Commissioner.

EXHIBIT A.

At the execution of a commission for the examination of witnesses between the United States vs. "4 de Septiembre," Segundo Casteleiro, claimant, this paper, marked "Exhibit A," was produced and shown to the witness Juan Lluria Pujadas, and by him deposed unto and subscribed at the time of this examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

FRANCISCO GANDON.

I. To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am 71 years of age; I am engaged in the fishing business; that was my occupation, and I resided at Havana during the months of April and May, 1898.

II. To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the months of April and May, 1898, and was familiar with the market prices of fish, fresh and salted, during said period; salted fish were sold at Havana during said months at $10 (ten dollars) Spanish silver per quintal, and fresh fish were sold at the same price, $10 (ten dollars) silver per qq. These were market rates.

III. To the third interrogatory he answers and says:

44 Before the blockade was declared fresh fish were sold at $7 (seven dollars) silver per quintal, and salted at $3.50 to $4 (three and one-half to four dollars) silver per quintal. These prices gradually rose as soon as the blockade was declared to $10 silver per quintal. Live or fresh fish were never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRCO. GANDON.

Answered under oath and subscribed before me, at Havana, this 27th day of Aug., 1900.

JOSEPH A. SPRINGER,
Commissioner.

ANTONIO SUAREZ:

I. To the first interrogatory the said Antonio Suarez answers and says as follows:

My name is Antonio Suarez y Alvarez; am 34 years of age; I am engaged in commerce, as a member of the firm of Vilar, Senra & Co.; that was my occupation at the time mentioned in April and May, 1898, and I resided then, as now, in this city at No. 2 Enna st.

II. To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra & Co., I bought and sold fresh or live fish and salted fish, and was familiar with the market prices of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal of fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

III. To the third interrogatory he answers and says:

During all the period mentioned, April and May, 1898, live or fresh fish were abundant and never wanting in supply, because it was brought from Batabano. During previous years the usual market price of
45 live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish from three to four dollars Spanish silver per quintal. On account of the blockades established by the United States about April 21st the price of fresh fish gradually rose to the price that I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this 25 day of Aug., 1900.

JOSEPH A. SPRINGER.

CITY OF HABANA, *Island of Cuba:*

Be it remembered that, on the days and year within mentioned, before me, the undersigned, personally came Messrs. Segundo Casteleiro, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on the said days answer all and singular the interrogatories, direct and cross, to said commission attached, and the answers by them respect*fully* made were by me correctly taken down, and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, by them answered in said language, reduced to writing in English, and read to them in Spanish by me, the commissioner, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Havana the 29 day of August, A. D. 1900.

JOSEPH A. SPRINGER,
Commissioner.

46 In the district court of the United States for the southern district of Florida.

UNITED STATES
vs.
"4 DE SEPT'EMBRE," SEGUNDO CASTELEIRO, CLAIMANT. } Prize.

To Joseph A. Springer, commissioner, Dr.

For taking testimony of witnesses in above cause, interpreting, etc.. $20.00

Havana, August 29, 1900.
Received payment from claimant's attorney.

JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) The United States vs. "4 de Sept'embre," Segundo Casteleiro, claimant. Commission. The execution of within commission

appears within certain schedules hereto annexed. Havana, Aug. 29, 1900. Joseph A. Springer, commissioner. Filed Sep. 3, 1900. E. O. Locke, clerk.

47 In the United States district court, southern district of Fla.

In re Fishing Smack cases.

JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

Q. What position did you hold under the United States, if any, in the month of June, 1898?

A. United States marshal.

Q. For the southern district of Florida?

A. For the southern district of Florida.

Q. Were you acquainted with the Spanish fishing smack "Quatro de Septembre?"

A. Well, she was a prize brought in there; I saw her.

Q. Did you sell her?

A. Yes, sir.

Q. In a condemnation sale?

A. Yes, sir.

Q. State what she brought, please.

(Objected to as immaterial and irrelevant, and as not affording the proper measures of damages in this case.)

By COMMISSIONER. I will state, Mr. Stripling, that I will take cognizance of what they brought as a matter of record.

A. Four hundred and seventy dollars.

Q. Where have you resided, Captain, most of the time since the civil war?

A. In the United States; the last twenty-five or thirty years in Florida, at Key West.

Q. Have you ever owned any sailing vessels?

A. Yes, sir; small sailing vessels.

48 Q. How many?

A. I have been interested in six or more vessels. I have owned, built, and partly owned six or more.

Q. Captain, have you kept yourself posted, during your residence in Key West, of the value of vessels of the character of the "Quatro de Septembre?"

A. I wouldn't like to say that I have. She is a fishing smack, and a class of vessel I haven't had anything to do with.

Q. You saw her?

A. Yes, sir; small vessel.

Q. No material difference between that vessel and any other sailing vessel of the same type, except in the fact that she had a well in her?

A. Yes, she had a well.

Q. Does that add very materially to the cost of a vessel?

A. It would, some.

Q. I am talking about the cost of construction.

A. I dont't know. Cost more, I suppose; how much more I would not like to say.

Q. About what percentage would you estimate it cost more than an ordinary vessel?

(Objected to. Captain Horr says that he has had no experience in it.)

Q. From your knowledge of the construction of boats generally, would a vessel of this character necessarily be more expensive in constructing?

A. Yes, I think so; a little.

Q. What percentage would you say?

(Objected to on the ground that no sufficient foundation laid.)

A. I don't know.

Q. Captain, can you give an estimate that is based on figures and a knowledge of boats so as to reliably be an estimate?

A. I hardly think it will be a reliable estimate.

49 Q. Well, from appearance of this vessel, and examination you made of it at the time she was in your custody, what would you consider a fair valuation for her?

(Objected to on the ground that the witness has stated that he has had no experience with fishing smack vessels and their values, and that there has been no statement of the witness as yet that he has made a sufficient examination of the vessel upon which to form the ground for an expert opinion.)

Q. State what kind of an examination you made of her, Captain.

A. I don't recollect that I made any particular examination of her. I examined some of them, and went into their hold, but can't remember which ones. I recollect one that I made a pretty thorough examination of.

Q. These parties value this vessel at $5,000.00; from her appearance at the time she was in your possession what would you consider a fair valuation of her?

(Objected to on the ground that the value of this vessel is to be determined upon the fact that this was a Spanish or Cuban fishing vessel. Objection sustained, to which ruling counsel for the Government excepts.)

A. I would say one thousand dollars, at the outside, for that vessel. It is pretty fair to assume that she would not bring any more than that, or those fish men around there would have got her.

(Motion to strike the answer, on the ground that no proper foundation has been laid for the question, and the further ground that the value at Key West, of which the witness speaks, is improper and irrelevant. Motion is granted, to which counsel for the Government excepts.)

Q. You have stated that one thousand dollars, in your opinion, would be a fair valuation for this vessel. Now, state fully upon what you base that estimate.

50 A. I would say twenty-five hundred dollars. I don't recollect the exact condition of this boat. Some of them were run down and some in pretty good condition—it is hard for me to distinguish at this time.

* * * * * * *

77 JOHN LOWE, a witness on behalf of the United States, being first duly cautioned and sworn, testified as follows:

Q. Please state your name, age, residence, and occupation.

A. John Lowe; residence, Key West; occupation, a merchant.

Q. Have you had opportunities for observing the selling of vessels and becoming familiar with the values thereof?
A. I have.
Q. Have you bought, sold, or traded in sailing vessels?
A. I have.
Q. For what number of years?
A. I have for about thirty years.
Q. Do you recollect the sale of the fishing smacks by the Government?
A. Yes, sir.
Q. About when was that made?
A. I don't recollect the date.
Q. Did you know the vessels "Cuatro de Setiembre" and "Lola Engracia?"
A. Yes, sir.
Q. Did you make an examination of those vessels at the sale?
A. No, sir.
Q. Did you purchase those vessels?
A. Yes, sir.
Q. What prices did you pay for them respectively?
A. $450 for the "Cuatro de Setiembre" and $1,000 for the "Lola Engracia."
78 Q. Upon what did you base your value?
A. I merely went to the auction on the day of sale out of curiosity, and when these vessels were offered I thought the prices reasonable and I purchased them.
Q. Did you examine them after the sale?
A. Yes.
Q. What did you find their condition to be?
A. Medium fair.
Q. Did you make any repairs on them?
A. Excepting to put them on the dock and painting them, and probably it cost about $200 each.
Q. Did you sell them subsequently?
A. Yes, sir; the "Cuatro de Setiembre" was sold for $1,500, and the "Lola Engracia" for $2,000.
Q. At the time of the purchase by you, would you say from the condition of the vessels, were the prices paid by you fair?
A. One of them, I thought, was fair.
Q. Which one?
A. The "Lola Engracia;" the "Cuatro de Setiembre" was sold cheap.
Q. Noticing the condition before repairs were put on it, what would have been a fair estimate of its value?
A. About $1,000.

Cross-examination:

Q. How long did you keep these vessels?
A. I do not recollect. About the same time they were all sold to a party—or near the same time.
Q. All disposed of at the same time?
A. Yes, sir.

79 Q. Did you know how these two vessels were equipped and what was their special equipment?

A. As fishing smacks.

Q. Did you know what was their dimensions when you bought them?

A. Not at the time I bought them.

Q. Whom did you sell them to?

A. To parties in Havana.

Q. Now, at the time of this public sale was there any demand for fishing smacks at this port?

A. I dont't think there was.

Q. What did you base your estimate of the valuation of these two vessels on, your own knowledge or from information obtained from others?

A. One of the vessels I knew had been owned in Key West, the "Lola Engracia," and the other I knew nothing of until after I purchased and examined her myself.

Q. Have you ever had fishing smacks built for yourself in Key West; and if so, what was about the cost of building such vessels?

A. I had two built, the "Emma Lowe" and "City of Havana;" each cost me about $10,000.

Q. What was their tonnage?

A. 49 tons.

Q. Was there any fishing-smack business going on at the time of the sale?

A. There was not then.

Q. Mr. Lowe, for what purpose did you purchase these two vessels?

A. I purchased them on speculation.

Redirect examination:

Q. Was there any competition at the sale?

A. There were several bidders and a little competition.

80 Q. How soon after you purchased these vessels did you make your examination of them?

A. I went on board the same day, and put them on the dock about a week afterwards.

Q. Do you recollect the tonnage, approximately?

A. The "Cuatro de Setiembre" 29 tons and the "Lola Engracia" 40 tons.

Q. What would you judge the age of these vessels at the time you bought them?

A. The "Lola Engracia" was a pretty old vessel, about fifteen or twenty years old; the "Cuatro de Setiembre," I don't know her age; I should judge she was about ten years old.

Q. Did you get the best prices obtainable for said vessels?

A. Yes; at the time they were sold.

Q. About what percentage on original cost value is the depreciation in such vessels after ten years, fifteen years, or twenty years?

(Objected to on the grounds that it has been shown that the witness is an expert.)

Q. How long have you been engaged in buying and selling vessels?

A. About twenty years.

* * * * * * *

99 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "QUATRO DE SETIEMBRE" AND cargo, Segundo Casteleiro, claimant, on behalf of owners and crew. } Prize No. 19.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of the U. S. vs. The "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e:

Value of vessel	$5,000.00	
Cargo, 150 kintals fish @ $5	750.00	
		$5,750.00
Interest on do. @ 8% from date of capture, Apr. 27th, 1898, to Nov. 2d, 1901		1,617.67
		$7,367.67
Less proceeds already returned claimant		103.67
		$7,264.00
And expenses of issuing commission and executing commission in Havana		21.75
Total		$7,285.75

I also file herewith the testimony taken herein and a report showing my proceedings under the order appointing me, and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, Specially Appointed.

Nov. 2d, 1901.

113 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902. Present, Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "CUATRO DE SETIEMBRE," LEONARDO Bunuel, claimants.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel be dismissed, and that

the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors, being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having on or about November 2, 1901, reported the amount of the compensatory damages to be recovered by the claimant herein at the sum of $\$7{,}285\frac{75}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report, filed on behalf of the United States, having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which also awarded $25 costs to the claimants in addition to the damages
114 found by the commissioner;

And the owner of the said vessel, at the time of her capture, having been substituted in place of her master, as claimant of the said vessel, by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States, and to the counsel for the naval captors, of a further hearing on the question whether the damages awarded shall be charged against the United States, or against the naval captors, or apportioned between the United States and the naval captors, as provided in the interlocutory decree hereinbefore referred to;

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed that the claimant, Leonardo Bunuel, have, receive, and recover from the United States, the libelant herein, the sum of $\$7{,}285\frac{75}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Cuatro de Setiembre" and her cargo herein, together with the further sum of $25 costs and interest on the amount of the damages from November 2, 1901, the date of the said commissioner's report, to June 16th, 1902, amounting to the sum of $\$359\frac{30}{100}$, making in all the sum of $\$7{,}670\frac{05}{100}$ with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 4, 1902. File No. 18816. S. Florida D. C. U. S. Term No. 588. The United States, appellant, vs. The Fishing Smack "Cuatro de Setiembre," Leonardo Bunuel, claimant. Filed January 31, 1903.

O

3648

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 589.

THE UNITED STATES, APPELLANT,

vs.

THE FISHING SMACK "SANTIAGO APOSTOL," CESAR DE LA TORRE, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JANUARY 31, 1903.
(19917.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 589.

THE UNITED STATES, APPELLANT,

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THE FISHING SMACK "SANTIAGO APOSTOL," CESAR DE LA TORRE, CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OE FLORIDA.

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a In the Supreme Court of the United States, October term, 1902.

THE UNITED STATES, APPELLANT,
v.
THE FISHING SMACK "SANTIAGO APOSTOL,"
Cesar de la Torre, claimant.
} No. 589.

Stipulation as to record.

It is hereby stipulated that the portions of the record which are formal and common to the records in all the "fishing smack" cases, being set out at length in the "Paquete Habana" and "Lola" records, shall not be printed, and that the following portions only of the record herein shall be printed, viz:

"Statement of proceeds," p. 43; "testimony in Havana," being claimants' testimony in full, pp. 54–64, inclusive; the following portion of "testimony in Jacksonville," being an extract from the testimony of J. F. Horr, a Government witness, viz: Beginning at the top of p. 71 and extending to the middle of p. 71; the following portions of the "testimony in Key West," viz: An extract from the testimony of

b Alfred Atchison, a Government witness, beginning at the top of p. 94 and extending to the end of the redirect examination, on p. 98; the "commissioner's findings," on p. 113; the last paragraph of the final decree of the court below, on p. 126.

It is also understood and agreed that, respecting the parts of the record omitted, counsel are at liberty to refer to the identical or similar portions of the records in the cases of the "Paquete Habana" and "Lola."

Washington, March 3, 1903.

HENRY M. HOYT,
Assistant Attorney-General.
J. PARKER KIRLIN,
Proctors for Claimants.

c (Indorsed:) File No. 18817. Supreme Court U. S. October term, 1902. Term No. 589. The United States, appt., vs. The Fishing Smack "Santiago Apostol," &c. Stipulation to omit parts of record in printing. Filed Mch. 6, 1903.

43 United States district court southern district of Florida.

Spanish schooner "Santiago Apostol." Prize No. 27.

Clerk's statement.

Proceeds of sale deposited		$2,700.00
Paid fees prize commissioner and expenses	$40.85	
Paid fees clerk	41.65	
Paid marshal and expenses	302.21	
		384.71
Paid claimant under decree April 5th, 1900		$2,315.29

Respectfully submitted.

E. O. LOCKE, *Clerk.*

April 16, 1900.

(Endorsed:) United States vs. "Santiago Apostol." Clerk's statement. Filed Apr. 16, 1900. E. O. Locke, clerk.

54 In the district court of the United States southern district of Florida.

UNITED STATES
vs.
"SANTIAGO APOSTOL," C. DE LA TORRE, CLAIMANT. } Prize.

By virtue of a commission from the honorable district court of the fifth circuit of the United States, southern district of Florida, to me directed, I have caused Cesar de la Torre, Juan Lluria y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses in the said commission named, personally to come before me, who having been duly sworn true answer to make to all and singular the direct and cross-interrogatories to said commission attached, depose and say as follows:

To the first interrogatory the said Cesar de la Torre answers and says as follows:

My name is Cesar de la Torre; I am 35 years age; a merchant; reside in Regla, No. 19 Sancturario st.; during the period named in the months of April and May, 1898, I resided at Merced st., No. 31, in this city.

To the second interrogatory he answers and says:

I was sole owner of the fishing smack "Santiago Apostol," and her value at that time was about $10,000; I base her valuation upon that given by the notarial certificate of her construction at Mariel, and the official certificate of appraisement of $9,980 and sundry minor expenses made on her, which somewhat increased her value. I herewith produce the original certificate of appraisement referred to, and file same
55 with a translation of parts of said certificate of construction and note thereto, with a translation, and file same with this answer, Exhibits "A" and "B."

To the third interrogatory he answers and says:

I consider that the said vessel earned for me about 2 % net per month on the amount of capital, ascertaining such by the usual means of deducting from gross receipts of sales of her cargoes the amount of expenses.

To the fourth interrogatory he answers and says:

Mr. Ramon Alverez, who resides in Key West, Fla., is the duly authorized agent and attorney in fact to represent the owner in this suit.

To the fifth interrogatory he answers and says:

I have nothing further to add here.

Cross-interrogatories:

To the first cross-interrogatory he answers and says:

I know the said vessel since the time I built her in 1890; her gross tonnage is 95.16 100ths and net 90.40. The "Santiago Apostol" was built in the port of Mariel, the latter part of December, 1890.

To the second cross-interrogatory he answers and says:

I built the vessel myself.

To the third cross-interrogatory he answers and says:

The vessel was built under my direction. I first obtained the usual official permit to build; I paid in cash for all the material and labor as it progressed, and then presented accounts of same, with an official certificate of her measurement and value, to a notary for due record thereof, and also presented a certified notarial copy of this proceeding for registry

at the office of the captain of the port, in accordance with the
56 laws of this country then in force. The vessel was officially appraised at $9,980, Spanish gold. I refer to exhibits A and B.

To the fourth cross-interrogatory he answers and says:

The vessel was engaged in the fishing business from the time she was built until captured as a prize of war.

To the fifth cross-interrogatory he answers and says:

She has never been engaged in any other kind of business than the fishing business.

To the sixth cross-interrogatory he answers and says:

After deducting from gross receipts of sales of live or fresh fish 75 cts. per quintal for live cherna and $1 per quintal for pargo, which goes to the benefit of the owners of the ship, as an allowance for ships expenses, two-thirds of the remainder is paid to the seamen, they being compensated by a percentage of the earnings.

To the seventh cross-interrogatory he answers and says:

The "Santiago Apostol" made about 12 to 14 trips a year; I can not give the dates of departure and entry of each trip. She brought 14 to 15,000 lbs. of live fish each trip, and realized about $200 to $250 each trip from sale of her cargo; the allowance stated and one-third of remainder went to owners, and the other two-thirds to the seamen.

To the eighth cross-interrogatory he answers and says:

I kept no special account books or memoranda of the business of this vessel; the business of each trip was settled then and there.

The ninth cross-interrogatory he answers and says:

I can give only the name of the "patron" or master who has
57 always been Sebastian Rodriguez Ortiz, and he resides in Regla. I can not give the names of the seamen or fishermen who have been employed on the vessel, but these undoubtedly appear on the "rols" or crew lists of the vessel, which I understand have already been filed before the court at Jacksonville.

To the tenth cross-interrogatory he answers and says:

In the month of September, 1894, repairs to the extent of $1,200 were made upon her, as appears in the proceedings on file at the office of the captain of the port on account of a collision she experienced with the American S. S. "Yumuri." These repairs were made at the shipyard of Don Ceferino Miranda, carenero de la Puntilla. Again in 1897, other repairs were made upon her, such as a new bowsprit, repairs to the bow, new blocks, windlass, etc., which cost $1,300. They were made at the same place.

CESAR DE LA TORRE.

Answered under oath and subscribed before me at Havana, this twenty 9th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

58 Don Manuel de J. Arocha, notary public, personally appeared Don Cesar de la Torre y Sanchez del Rio, * * * and declared, first that as doth appear by a certificate dated the tenth of the present month, authorized by the adjutant of the marine and captain of the port of Mariel, the appearer has finished building in said port a sailing

vessel intended for the fishing business, named "Santiago Apostol," of native materials and schooner rigged, which measures ninety-five and sixteen hundredths tons gross, and ninety forty hundredths net, which vessel is to be employed in fishing on the coasts of this island and vicinity.

[NOTARIAL SEAL.] (Signed) MANUEL J. AROCHA,
Notary Public.

This instrument has been duly recorded in the entry made of the fishing smack "Santiago Apostol" on folio 2115 of the 3rd list of the district of this capital.

Havana, December 13th, 1890.

[SEAL.] (Signed) GINES DE PAREDES.

At the execution of a commission for the examination of witnesses between the United States vs. "Santiago Apostol," Cesar de la Torre, claimant, the foregoing paper, marked "Exhibit B," was produced and shown to the witness, the said Cesar de la Torre, and after comparison by me with the original certificate, deposed unto by him as a true copy of part of the notarial instrument respecting the construction of his vessel, the "Santiago Apostol," and subscribed by him at the time of his examination before me. I further certify that the foregoing translation of same is correct.

CESAR DE LA TORRE.
JOSEPH A. SPRINGER,
Commissioner.

59 JUAN LLURIA Y PUJADAS.

To the first interrogatory the said Juan Lluria y Pujadas answers and says as follows:

My name is Juan Lluria Pujadas; I am 75 years of age; reside at Regla No. 2 Botes st., and am a shipwright, a master ship carpenter and builder by occupation. I am also maestro mayor de behia, or harbor master of the port. At the time mentioned, April and May, 1898, and prior thereto, I resided in the same place with the same business.

To the second interrogatory he answers and says:

The position of maestro mayor de bahia del puerto de la Habana, or harbor master of the port of Havana, was an official position under the Spanish Government to which I was appointed in 1897, having served as suplente or deputy for about 30 years. It was my duty by virtue of my position to inspect and examine and value all vessels that entered the harbor of Havana, and especially such as made repairs in this port. I have inspected and valued the Spanish fishing smack "Santiago Apostol" to be worth on March 1st, 1898, $10,000.00, Span. gold, basing my appraisement of said vessel upon her special conditions and my constant inspection of vessels of her class, as appears in my certificate of inspection and appraisement of a number of such vessels, made at the request of Messrs. Vilar, Senra and Co. and Bengochea and Co. and filed with my declaration in the case of "Antonio y Paco," and marked Exhibit "A," to which I refer and of which I now produce a copy (translated) of the part thereof referring to the "Santiago Apostol" to be filed for convenience with this declaration.

Exhibit "A."

60 Cross-interrogatories:

To the first cross-interrogatory he answers and says:

The position I held was that of maestro mayor de bahia, or harbor master of the port of Havana.

To the second cross-interrogatory he answers and says:

No; I had no official records to keep, but made reports to the captain of the port in case of each vessel respecting her inspection, valuation, expense of repairs, etc., and such reports should be of record in the office of the captain of the port.

JUAN LLURIA.

Answered under oath and subscribed before me at Havana this twenty-8th day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

61 [Translation.]

I, the undersigned, Juan Lluria y Pujadas, harbor master of the port of Havana, and expert appointed by Messrs. Vilar, Senra and Co. and Bengochea and Co. to appraise the value of their respective fishing smacks in the condition in which they were on the first day of March of this year,

Do hereby certify that owing to the constant inspection which I make of such vessels, in my official capacity, the fishing smack "Santiago Apostol," registered folio 2115, of 95 tons burden, wooden hull, schooner rigged, rigging tight and staunch; sails and gearing complete, with the necessary iron ballast; capstan, two anchors, and chains; galley caboose and outfit; sailing compass, lanterns, and side lights and other appurtenances, and one boat with equipments, all in good condition, I appraise in the sum of $10,000.00, Spanish gold. * * *

In testimony whereof I issue this certificate at Havana the twenty-third day of November, eighteen hundred and ninety-eight.

[SEAL.] (Signed) JUAN LLURIA.

I certify the foregoing to be a faithful translation from the Spanish language of that part of the official certificate of appraisement, annexed to answers of above witness, to commission in case of Antonio y Paco, and referring to the vessel named in this commission, the "Santiago Apostol."

JOSEPH A. SPRINGER,
Commissioner.

Exhibit "A." At the execution for the examination of witnesses between the United States vs. "Santiago Apostol," C. de la Torre, claimant, this paper, marked Exhibit "A," was produced and shown to the witness Juan Lluria y Pujadas, and by him deposed unto and subscribed at the time of his examination before me.

JUAN LLURIA.
JOSEPH A. SPRINGER,
Commissioner.

62 FRANCISCO GANDON.

To the first interrogatory the said Francisco Gandon answers and says as follows:

My name is Francisco Gandon y Ramirez; I am seventy-one years of age; I am engaged in the fishing business; that was my occupation, and I resided in Havana during the months of April and May, 1898.

To the second interrogatory he answers and says:

Yes; I bought and sold fresh and salted fish during the said months of April and May, 1898, and was familiar with the market price of fish, fresh and salted, during said period. Salted fish was sold at Havana during said months at $10 (ten dollars), Spanish silver, per quintal, and fresh fish was sold at the same price, $10 (ten dollars), silver, per qq.

To the third interrogatory he answers and says:

Before the blockade was declared, fresh fish was sold at $7 (seven dollars), silver, per quintal, and salted at $3.50 to $4 (three and a half to four dollars), silver, per quintal. These prices gradually rose as soon as the blockade was declared to $10, silver, per quintal. Live or fresh fish was never lacking, as it was supplied from the south coast via Batabano, while salted fish became very scarce.

FRAN'CO GANDON.

Answered under oath and subscribed before me at Havana this twenty-seventh day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

63 ANTONIO SUAREZ.

To the first interrogatory the said Antonio Suaraz answers and says as follows:

My name is Antonio Suarez y Alverez; I am 34 years of age; I am engaged in commerce as a member of the firm of Vilar, Senra and Co.; that was my occupation at the time mentioned, April and May, 1898, and I resided then, as now, in this city, at No. 2 Enna st.

To the second interrogatory he answers and says:

As a member of said firm of Vilar, Senra and Co. I bought and sold fresh or live fish and salted fish, and was familiar with the market price of fresh and salted fish in Havana during said months of April and May, 1898.

The prices at that time were $10 (ten dollars) silver per quintal for fresh or live fish, and salted fish was sold by my firm at $10 (ten dollars) Spanish gold per quintal.

To the third interrogatory he aswers and says:

During all the period mentioned, April and May, 1898, live or fresh fish was abundant and never was wanting in supply, because it was brought from Bantabano. During previous years the usual market price of live or fresh fish was $7 (seven dollars) Spanish silver per quintal, and for salted fish three to four dollars Spanish silver per quintal. On account of the blockade established by the United States about April 21st, the prices of fresh fish gradually rose to the prices I have quoted, as also salted fish increased in price. I have given the highest market rates, as the prices of all kinds of provisions gradually rose at that period.

ANTONIO SUAREZ.

Answered under oath and subscribed before me at Havana this twenty-fifth day of August, 1900.

JOSEPH A. SPRINGER,
Commissioner.

64 CITY OF HABANA, *Island of Cuba:*

Be it remembered that on the days and year within mentioned, before me, the undersigned, personally came Messrs. Cesar de la Torre, Juan Lluria Y Pujadas, Francisco Gandon, and Antonio Suarez, the witnesses named in the commission, who, having been duly sworn, did on said days answer all and singular the interrogatories, direct and cross, to said commission attached; and the answers by them respectively made were by me correctly taken down and then read over to said witnesses and subscribed by them.

I further certify that the interrogatories were made to the witnesses in the Spanish language, reduced to writing in English and read to them by me, the commissioner, in Spanish, with which language I am familiar, and by them ratified and subscribed.

In witness whereof I have hereunto set my hand and affixed my seal at the city of Habana the twenty-ninth day of Aug., 1900.

[OFFICIAL SEAL.] JOSEPH A. SPRINGER,
Commissioner.

(Endorsed:) United States district court, southern district of Florida. United States vs. "Santiago Apostol." Cesar de la Torre, claimant. Commission to take testimony. Filed Sept. 3, 1900. E. O. Locke, clerk.

* * * * * * *

65 JOHN F. HORR, being duly sworn on behalf of the United States, testified as follows:

* * * * * * *

71 Q. Do you remember the "Santiago Apostol"?

A. Yes, sir.

Q. According to the testimony here, she seems to have been built in 1890 and is valued at one thousand dollars. State whether or not you consider that a fair valuation.

(Same objection.)

A. I consider it excessive in Key West.

Q. What would you consider a fair valuation for her, assuming that she was built in 1890 and cost nine thousand and eighty dollar' originally?

(Same objection.)

A. I would consider five thousand dollars about her value in Key West.

Q. How far is Key West from Havana, Captain?

A. Eighty-five miles.

* * * * * * *

94 ALFRED ATCHISON, a witness on behalf of the United States, being first duly cautioned and sworn, testifies as follows:

Q. State your name, age, place of residence, and occupation.

A. Alfred Atchison; age, 42 years; residence, Key West; occupation, seaman.

Q. How long have you been following that?

A. Twenty-two years.

Q. Are you familiar with sailing vessels?

A. I am; sailing vessels under 100 tons.

Q. In the course of your occupation and observation, have you become familiar with the value of sailing vessels?

A. Yes, sir; pretty well.

Q. Do you know the vessel "Santiago Apostol"?

A. Yes, sir.

Q. Do you recollect the sale of said vessel by the United States marshal?

A. Yes, sir.

Q. Do you recollect the time of that sale?

A. I think it was in 1898.

Q. Did you purchase said vessel?

A. I purchased her.

Q. Did you at or near the time of your purchase make an examination of the "Santiago Apostol"?

A. I did.

Q. State what you found her to be.

A. She was in good condition.

Q. State, Mr. Atchison, her tonnage.

A. I don't exactly what her tonnage was. She had to be remeasured.

95 Q. Will you state with reference to the different purchases what condition you found her to be in—the helm, masts, rigging, and etc?

A. The helm was in a good condition. Well, everything else was in a pretty good condition, excepting her mainsail was not in a good condition, but we had used it two or three trips.

Q. Then you repaired her?

A. Made some repairs.

Q. From your knowledge of the value of sailing vessels, what would you say was her value at the time you purchased her?

A. All that depends on condition.

Q. Well, what would you consider at that time a fair market value at the time you purchased her?

A. At that time, well, on speculation I suppose about $5,000, she would have brought from the business which I expected to go into when I bought her she would have been worth more.

Q. What did you pay for her?

A. $2,700.

Q. What did you sell her for?

A. $4,000.

Q. Did you consider that a good and fair price for her?

A. Yes, sir; under the circumstances.

Q. Did you get all that you could for her?

A. No, I don't think so.

Q. Then you took less than you could have gotten for her?

A. Yes; because I complicated myself so that I had to sell.

Q. O, I understand you to say that you could have sold to either one of two parties and chose the one who would pay the lesser amount?

A. I could not choose.

96 Q. To whom did you sell?

A. I sold to parties in Havana.

Q. Did you make any other repairs besides that of the mainsail?
A. Some other repairs which we had damaged ourselves.
Q. Did you at or about that time examine the the "Oriente"?
A. Yes.
Q. Did you know her condition?
A. Yes.
Q. About what would you say she was worth?
A. I should judge she was worth about $3,500; I mean this conditionally; I mean that if the Cuban markets were open to us the vessel was worth more; I state if the Cuban markets were closed to us she was worth what you could sell her for.
Q. Cuban markets for what, do you mean?
A. For fishing business.
Q. Have the Cuban markets been open to the fishermen of this country since?
A. No; not that I know of.
Q. Then that vessel has not been worth the sum you stated since that time?
A. No; I don't suppose she was.
Q. Could you not give any idea what she is worth here?
A. I suppose about $2,500 or $3,000.

Cross-examination:

Q. Mr. Achison, what was your occupation in the early part of the year 1898?
A. I was deputy marshal.
97 Q. As deputy marshal did you have the fishing smacks in your care or custody?
A. Yes, sir.
Q. While they were in your custody did you make any examination of their condition in regard to the helm, mast, and sail?
A. I did, sir.
Q. What was the result?
(Objected to as not being proper cross-examination except in so far as the question refers to the two vessels referred to in the examination in chief.)
A. All were in generally good condition except one.
Q. Well, from the examination which you made of the "Oriente," what did you consider to be her value?
A. Well, I consider there are other considerations. If the market were free to us to sell in Cuba the vessel would have been worth $2,500 to my opinion, not opened to put her on speculation.
Q. I understand you to say here that all the vessels were in a good condition?
A. Fair, as regular vessels are, as vessels are generally.
Q. Was there any fishing smack business carried on at Key West with Cuba at the time of this public sale?
A. No.
Q. Do you know whether there was any demand at that time in Key West for fishing smacks?
A. No.
Q. What become of all these vessels?

A. They were all sold back to the people in Havana.

Q. What value were they to the people in the United States if they could not use them in the fishing business?

98 A. Well, there were some other uses they could have been put to.

Q. Can you estimate the value?

A. No; because there is no business of that character going on between Cuba and the United States.

Q. Did you ever have any fishing smacks built for your own use?

A. No.

Redirect examination:

Q. Do you mean that the fish might be caught here be valueless to these smacks, except for shipment to Cuban ports?

A. I do.

Q. About how old were these smacks?

A. I do not know the age of any.

* * * * * * *

113 United States district court, southern district of Florida.

THE UNITED STATES
vs.
THE SCHR. "SANTIAGO APOSTOL," AND CARGO, Cesar de la Torre, claimant on behalf of owners and crew. } Prize No. 27.

Having been appointed by decree of said court, by request of parties, to ascertain and report to the court the amount of damages to be recovered by the claimant herein, in conformity with the decree of said court of April 5th, 1900, and with the opinion and decree of the U. S. Supreme Court in the case of The U. S. vs. the "Lola," dated Jan. 29th, 1900, I would respectfully report that upon examination and consideration of the proofs filed, testimony taken, and evidence of record and on file in said court, I find the amount of damages to be recovered by the claimant herein to be as follows, i. e.:

Value of vessel	$10,000	
Cargo, 190 kintals fish, @ $5	950	
		10,950.00
Interest on same @ 8% from date of capture, 1898, to Nov. 2, 1901		1,701.40
		12,651.49
Less proceeds already returned claimant		2,315.29
		$10,336.20
And expenses of issuing commission and executing commission in Havana		21.75
Interest on $10,336.20, April 17th, 1900, to November 2d, 1901		1,274.79
Total		$11,632.74

I also file herewith the testimony taken herein, and a report showing my proceedings under the order appointing me and the methods of arriving at the result above.

I also append my bill for services under said order, and request its approval and settlement.

Respectfully,

E. O. LOCKE,
U. S. Commissioner, specially appointed.

Nov. 2d, 1901.

125 At a stated term of the United States district court for the southern district of Florida, held in the court rooms in the Federal building in the city of Jacksonville, on the 16th day of June, 1902.

Present: Honorable James W. Locke, district judge.

THE UNITED STATES
vs.
THE "SANTIAGO APOSTOL," CESAR DE LA TORRE, claimant.

An interlocutory decree having been entered herein, on or about April 5, 1900, directing, among other things, that the libel herein be dismissed, and that the proceeds of the sale of the above-named vessel, together with the proceeds of any sale of her cargo, be restored to the claimant, with compensatory damages and with costs, the question whether such damages and costs should be charged against the United States and the naval captors, or apportioned between the United States and the naval captors being reserved for further consideration on the coming in of the commissioner's report as to the amount of such damages, and providing that it be referred by request of the parties to Eugene O. Locke, esq., United States commissioner, to ascertain and report to the court with all convenient speed the amount of the compensatory damages to be recovered by the claimant herein;

And the said commissioner having, on or about November 2nd, 1901, reported the amount of compensatory damages to be recovered by the claimant herein, at the sum of $11, 632$\frac{74}{100}$, as will more fully appear from his report on file;

And the exceptions to the said report filed on behalf of the United States having been overruled, and the said report having been duly confirmed by an order entered herein on or about May 19, 1902, which
126 also awarded $25 costs to the claimant in addition to the damages found by the commissioner;

And the owner of the said vessel, at the time of her capture, having been substituted in place of her master as claimant of the said vessel by an order of this court entered on or about May 19, 1902;

And due notice having been given to the United States and to the counsel for the naval captors of a further hearing on the question whether the damage awarded shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors as provided in the interlocutory decree hereinbefore referred to:

Now, on motion of Convers & Kirlin, proctors for the claimant, and after hearing the attorney for the United States and the attorneys for the naval captors, it is

Ordered, adjudged, and decreed, that the claimant, Cesar de la Torre, have, receive, and recover from the United States, the libelant herein, the sum of $\$11,632\frac{74}{100}$, the amount of the compensatory damages suffered by the said claimants by reason of the unlawful capture, condemnation, and sale of the said vessel "Santiago Apostol," and her cargo herein, together with the further sum of $25 costs, and interest on the amount of the damages from November 2, 1901, the date of said commissioner's report, to June 16, 1902, amounting to the sum of $\$537\frac{67}{100}$, making in all the sum of $\$12,231\frac{41}{100}$, with interest thereon until paid.

JAMES W. LOCKE,
U. S. District Judge.

(Indorsement on cover:) Office Supreme Court of U. S. Received Oct. 7, 1902. File No., 18817. S. Florida, D. C. U. S. Term No., 589. The United States, appellant, vs. The fishing smack "Santiago Apostol," Cesar de la Torre, claimant. Filed January 31, 1903.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 580. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," ETC.;

No. 581. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ETC.;

No. 582. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," ETC.;

No. 583. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," ETC.;

No. 584. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," ETC.;

No. 585. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "FERNANDITO," ETC.;

No. 586. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ORIENTE," ETC.;

No. 587. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPANA," ETC.;

No. 588. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," ETC.; AND

No. 589. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," ETC.

STIPULATION AS TO FACTS.

FILED MARCH 13, 1903.

3649

1 # SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 580. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," ETC.;

No. 581. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ETC.;

No. 582. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," ETC.;

No. 583. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," ETC.;

No. 584. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," ETC.;

No. 585. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "FERNANDITO," ETC.;

No. 586. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ORIENTE," ETC.;

No. 587. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPANA," ETC.;

No. 588. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," ETC.; AND

No. 589. THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," ETC.

STIPULATION AS TO FACTS.

It is hereby stipulated that the following facts appear in the original transcripts herein, viz:

580.

The "Poder de Dios."

The "Poder de Dios" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on May 7, 1898. The said
2 "Poder de Dios" is a fishing smack about 54 feet long on the keel, and of 56 tons burden, and at the time of capture carried as cargo 13,000 pounds of live fish and 80 kintals of salt fish.

No. 581.

The "Antonio y Paco."

The "Antonio y Paco" was seized by the U. S. ship "New York," Commander B. F. Tilley, U. S. N., commanding, on May 2, 1898. The said "Antonio y Paco" is a fishing smack about 57 feet long on the keel and of 46 tons burden, and at the time of capture carried as cargo 15,000 lbs. of live fish.

No. 582.

The "Engracia."

The "Engracia" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on April 26, 1898. The said "Engracia" is a fishing smack, about 60 feet long on the keel and of 43 tons burden, and at the time of capture carried as cargo 12,000 lbs. of live fish and 20 kintals of salt fish.

No. 583.

The "Severito."

The "Severito" was seized by the U. S. ship "Newport," Commander B. F. Tilley, commanding, on May 9, 1898. The said "Severito" is a fishing smack about 50 feet long on the keel and of 35 tons burden, and at the time of capture carried as cargo 5,000 lbs. of live fish and 15 kintals of salt fish.

No. 584.

The "Antonio Suarez."

The "Antonio Suarez" was seized by the U. S. ship "Uncas," Lieut. F. R. Brainard, commanding, on May 3, 1898. The said "An-
3 tonio Suarez" is a fishing smack about 54 feet long on the keel and of 40 tons burden, and at the time of capture carried as cargo 5,000 lbs. of live fish.

No. 585.

The "Fernandito."

The "Fernandito" was seized by the U. S. ship "Vicksburg," Commander A. B. H. Lillie, commanding, on May 7, 1898. The said "Fernandito" is a fishing smack about 45 feet long on the keel and of 35 tons burden, and at the time of capture carried as cargo 9,000 lbs. of live fish and 40 kintals of salt fish.

No. 586.

The "Oriente."

The "Oriente" was seized by the U. S. ship "Vicksburg," Commander A. B. H. Lillie, U. S. N., commanding, on May 5, 1898. The

said "Oriente" is a fishing smack about 60 feet long on the keel and of 45 tons burden, and at the time of capture carried as cargo 9,000 lbs. of live fish and about 3,000 pounds of salt fish.

No. 587.

The "Espana."

The "Espana" was seized by the U. S. ship "Newport," B. F. Tilley, U. S. N., commanding, on May 7, 1898. The said "Espana" is a fishing smack about 60 feet long on the keel and of 80 tons burden, and at the time of capture carried as cargo 18,000 pounds of live fish and 45 kintals of salt fish.

4 No. 588.

The "Cuatro de Setiembre."

The "Cuatro de Setiembre" was seized by the U. S. ship "Helena," Commander W. T. Swinburne, commanding, on April 27, 1898. The said "Cuatro de Setiembre" is a fishing smack about 60 feet long on the keel and of 30 tons burden, and at the time of the capture carried as cargo 15,000 pounds of live fish.

No. 589.

The "Santiago Apostol."

The "Santiago Apostol" was seized by the U. S. ship "Mayflower," Commander M. R. S. Mackenzie, U. S. N., commanding, on May 8, 1898; the said "Santiago Apostol" is a fishing smack about 78 feet long on the keel and of 70 tons burden, and at the time of capture carried as cargo 19,000 pounds of live fish and 100 kintals of salt fish.

HENRY M. HOYT,
Assistant Attorney-General, Counsel for the Appellants.
J. PARKER KIRLIN,
Counsel for the Appellees.

5 (Indorsed:) File No. 18808, &c. Supreme Court U. S., October term, 1902. Term No., 580 to 589. The United States, appellant, vs. The "Poder de Dios," et al. Stipulation as to facts. Filed March 13, 1903.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," JULIAN BENGOCHEA et al., claimants.	No. 580.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ANGEL LOPEZ ET AL., claimants.	No. 581.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," FRANCISCO GONZALES ET AL., claimants.	No. 582.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," DOMINGO TROCHA ET AL., claimants.	No. 583.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," VILAR, SENRA & CO., claimants.	No. 584.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA ET AL., claimants.	No. 585.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ORIENTE," MANUEL CARILLO, CLAIMANT.	No. 586.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPAÑA," MANUEL DEUS ET AL., CLAIMANTS.	No. 587.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," LEONARDO BUNUEL, claimant.	No. 588.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," CESAR DE LA TORRE, claimant.	No. 589.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

It is not necessary to reargue in these cases the questions of law presented in the *Paquete Habana* and

Lola. There is no difference whatever in principle between those cases and the present group. There are slight differences in the facts depending upon different ownership, tonnage, and condition of the particular vessel, and the evidence upon which the commissioner and the court below reached their findings as to value and damages.

The records, therefore, in the present cases have omitted, under stipulation, all the formal parts which are exactly identical or closely similar to the records in the two leading cases printed in full. Consequently, only those parts of the record herein are printed which relate especially or solely to the particular vessel. It is agreed that reference may be made to the records in the *Paquete Habana* and *Lola* for all omitted portions. There is also a stipulation as to the facts respecting seizure and as to tonnage and cargo in each case.

Following the theory and computation advanced by the Government in its brief in the other two cases, I submit herewith a statement of the proper basis for the allowance of damage as to each vessel, so that the court may itself reform the decree below and enter judgment for such amount of damages in the respective cases as may be just and proper.

"PODER DE DIOS."

The *Podèr de Dios* was seized on May 7, 1898, by the U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding. She was 54 feet long, of 56 tons burden, and carried a cargo of 130 quintals of live fish.

(Supplemental stipulated record, p. 1.) The agreed record shows on behalf of claimant an appraised value of $6,500 and the following particular facts: She was built in Nassau, New Providence, and the claimant had known the vessel since October 13, 1897; he thought her net tonnage to be about 51 tons; the claimant states her purchase price as $4,000, to which was added the cost of certain repairs and improvements, bringing her appraised value up to $6,500 (p. 2).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) considers the owners' value excessive and thinks $2,500 a fair valuation. W. D. Cash (p. 8) paid $1,010, which he considered a fair price for speculation or for the use of the boat in his business; he sold her for $1,500. His partner, W. B. Curry (p. 9), testifies that the vessel was in good condition; that she was put on the ways, cleaned, and painted; that she was worth $2,800, although the firm sold her for $1,500; and according to the reiterated statement in the records that these vessels were all sold back "to people in Havana," probably to her former owners or to parties in their interest, but as that fact is not clear about this boat, the Government accepts this witness's statement of her value as $2,800; the computation then works out as follows:

Value of vessel	$2,800	
Cargo, 130 quintals fish, at $3	390	
		$3,190.00
Less proceeds already returned claimant		660.09

With allowance of interest as indicated in the *Piquete Habana* and *Lola* cases.

"ANTONIO Y PACO."

The *Antonio y Paco* was seized on May 2, 1898, by U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding. She was 57 feet long, of 46 tons burden, and carried a cargo of 150 quintals of live fish. (Supplemental stipulated record, p. 2.) The agreed record shows on behalf of claimant an appraised value of $8,250 and the following particular facts: She was built in the United States, and claimant had known the vessel since 1884; he states her net tonnage as 42 tons; the claimant states her purchase price as $6,000, to which was added the cost of certain repairs and improvements, bringing up her appraised value to $8,250 on January 1, 1898 (p. 2). The harbor master, however, is more liberal, and under his formal certificate (p. 9) says that he inspected and valued her on March 1, 1898, at $9,000. This claimant produces extracts (taking the extracts from accounts) showing the earnings and charges on the two-third interest which his firm owned in the vessel.

The Government testimony is as follows: Marshal J. F. Horr (p. 12) says: "Taking into consideration the price that the boats sold for that were taken into Havana [by which he appears to refer to the fact of the resale of these vessels to Havana parties or to claimants themselves], I would consider $3,500 a fair price." He makes this answer believing that this vessel was formerly the *Emma Lowe*, which he believed had cost John Lowe (one of the witnesses) $5,000 or thereabouts to build, and which several years afterwards he

(Lowe) had sold for $3,500. Witness W. D. Cash (p. 12) says that the *Antonio y Paco* was bought by his firm for $1,910 and sold for $2,900 (p. 13). Witness W. B. Curry (p. 14) says that her full value was about $4,000 Taking that value, then, as fairly representing the increase over the price at which she was sold by her former owner, viz, $3,500, because of the repairs and improvements put on her, we have the following statement:

Value of vessel	$3,500	
Cargo, 150 quintals fish, at $3	450	
		$3,950.00
Less proceeds already returned claimant		1,533.29

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"ENGRACIA."

The *Engracia* was seized on April 26, 1898, by U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding; she was 60 feet long, of 43 tons burden, and carried a cargo of 120 quintals of fish (supplemental stipulated record, p. 2). The agreed record also shows on behalf of claimant an appraised value of $5,500, and the following particular facts: She was built in the United States and claimant had known the vessel about six years; he believed her net tonnage to be 46 tons or thereabouts; he states her purchase price as $4,500; that she earned on an average on her capital 18 to 22 per cent annually (p. 2); that she was repaired on two occasions, and that the sums expended were less than $1,000 each time; that he does not remember well enough to be more particular, as no

accounts or books of the vessel were kept (p. 3); the vessel was inspected by the harbormaster and valued on March 1, 1898, at $5,500 (p. 4).

The Government testimony is as follows: Marshal J. F. Horr (pp. 6, 7) testifies that the vessel sold for $1,000, and that he considers the claimants' valuation of $5,500 excessive. The confusion as to the *Lola Engracia* has been referred to in our main brief; it is evident that the vessel so called in Lowe's testimony refers to the *Engracia* and not to the *Lola;* that the witness bought the *Engracia* for $1,000, found her to be in fair condition, expended about $200 on her, and sold her for $2,000; he thought the price paid by him for the *Engracia* was fair; she was sold "to parties in Havana;" she had been owned in Key West; she was a pretty old vessel—about 15 or 20 years old. The computation works out as follows:

Value of vessel	$2,000	
Less repairs and improvements	200	
	1,800	
Cargo, 120 quintals fish, at $3	360	
		$2,160.00
Less proceeds already returned claimant		617.07

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"SEVERITO."

The *Severito* was seized on May 8, 1898, by U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding. She was 50 feet long, of 35 tons burden, and carried a cargo of 50 quintals of live fish. (Supplemental stipulated record, p. 2.) The agreed record

shows on behalf of claimant an appraised value of $8,000, and the following particular facts: She was built in the United States, and claimant had known the vessel six or seven years; he did not remember her tonnage (p. 2). The claimant states that he purchased a one-half interest in this vessel on August 19, 1896, for which he paid $1,500; he states her purchase price as $3,000. Repairs were made on her, which consisted of completely renovating the vessel, putting in new well, planking, rigging, and sails, costing in all about $4,600 (p. 2). She was valued by the harbor master on March 1, 1898, at $8,000 (p. 4).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) says that he considers the claimants' valuation excessive, from her tonnage and her age; that her tonnage could be rebuilt at Key West for much less. Witness M. Curry (p. 7), who purchased her for his firm, paid $1,350 for her and sold her for $3,000. The computation is, then, as follows:

Value of vessel	$3,000	
Cargo, 50 quintals fish, at $3	150	
		$3,150.00
Less proceeds already returned claimant		1,004.26

With allowance of interest as indicated in *Paquete Habana* and *Lola* cases.

"ANTONIO SUAREZ."

The *Antonio Suarez* was seized on May 3, 1898, by U. S. S. *Uncas*, Lieut. F. R. Brainard, U. S. Navy, commanding. She was 54 feet long, of 40 tons burden, and carried a cargo of 50 quintals of fish (supplemental stipulated record, p. 2.) The agreed record

shows on behalf of claimant an appraised value of $9,000, and the following particular facts: She was built in the United States, and claimant had known the vessel since 1884. He thought her net tonnage was about 34.74 tons. Claimant states that "my [his] firm, Vilar, Senra & Co., is the successor of the firm of C. Garcia & Co., and upon its dissolution and liquidation took charge of its business as it stood, and the value or price of the *Antonio Suarez* appeared in the general balance as $10,000 Spanish gold, and was accepted at that price" (p. 3). She usually earned for her owners about 15 to 20 per cent per annum (p. 2). He states that no extensive repairs were made on this vessel from the time she was purchased or transferred to claimant's firm (p. 4). This claimant produces extracts from accounts for the two years next preceding her capture, showing the quantity of fresh and salted fish of her cargo for each trip, and the total amount realized from the sales (p. 5). She was valued on March 1, 1898, by the harbor master, at $9,000 (p. 6).

The Government testimony is as follows: Marshal J. F. Horr (p. 9) says that the vessel was valued at $10,000; he sold her for $1,260, and he considers the claimants' valuation excessive; considering her age and everything, he thinks $3,000 at the outside would be a fair valuation. Witness William Reedy (p. 9), who bought the vessel, made some repairs on her bulwarks and sold her for $2,300; that was the best price he could get; he asked $4,000 but could not get it; he was given to understand that she cost $8,000 before

the war; this is rather uncertain as a basis for opinion, and on the whole as repairs were made, and from what has been said before, it appears that she was sold in the Havana market, the selling price, $2,300, appears to be a fair valuation. The computation is as follows:

Value of vessel	$2,300	
Cargo, 50 quintals fish, at $3	150	
		$2,450.00
Less proceeds already returned claimant		921.75

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"FERNANDITO."

The *Fernandito* was seized on May 7, 1898, by the U. S. S. *Vicksburg*, Commander A. B. H. Lillie, commanding; she was 45 feet long, of 35 tons burden, and carried a cargo of 90 quintals of live fish (supplemental stipulated record, p. 2). The agreed record shows on behalf of claimant an appraised value of $5,500, and the following particular facts: She was built in the United States and claimant was unable to say how long he had known the vessel; claimant states that the vessel was valued at $5,500 when purchased, and that he had a one-half interest in her for which he paid $2,750; he estimates her earning capacity to have been 24 to 28 per cent per annum on her capital (p. 2); he further states that no repairs were made on the vessel since her purchase, beyond painting, replacing cables, etc. (p. 3).

The only reference to the *Fernandito* in the Government testimony is Marshal J. F. Horr's statement

(p. 6), that she brought $500 at the Government sale, and that he does not recall her condition well enough to say whether the claimants' valuation of $5,500 is excessive or not; following the indications as to the other vessels sold at the Government sale for the same amount or thereabouts, it would seem that $2,000 is a very ample allowance for this vessel. The computation is then as follows:

Value of vessel	$2,000	
Cargo, 90 quintals fish, at $3	270	
		$2,270.00
Less proceeds already returned claimant		160.53

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"ORIENTE."

The *Oriente* was seized on May 5, 1898, by U. S. S. *Vicksburg*, Commander A. B. H. Lillie, U. S. Navy, commanding. She was 60 feet long, of 45 tons burden, and carried a cargo of 90 quintals of live fish. (Supplemental stipulated record, pp. 2, 3.) The agreed record shows on behalf of claimant an appraised value of $5,000 and the following particular facts: Claimant states that he had known the vessel for about thirty years; that he had purchased her of W. D. Cash, of Key West, some twenty-five years ago; he states her net tonnage as 46.15; claimant states that he paid $1,000; she was repaired on different occasions, aggregating a total of $9,873.31 for said repairs (p. 3); she was valued by the harbor master on March 1, 1898, at $5,000 (p. 5).

The Government testimony is as follows: Marshal J. F. Horr (p. 8) says that the valuation of $5,000 is excessive, but he does not recall her condition at the time well enough to place a valuation on her. Witness Alfred Atchison (p. 8) judges that the *Oriente* was worth about $3,500; that "if the Cuban markets were open to us the vessel was worth more," by which he evidently means more than she brought at the Government sale and on the resale (although her resale does not appear), because on the next page he again fixes her valuation at $2,500 or $3,000, and finally says, "If the market were free to us to sell in Cuba, the vessel would have been worth $2,500, in my opinion." It is this witness who says, in reply to the question "What become of all of these vessels?:" "They were all sold back to the people in Havana." It seems fair and reasonable in the light of this testimony that $3,000 is a liberal allowance for this vessel; and the computation is then as follows:

Value of vessel	$3,000	
Cargo, 90 quintals fish, $3	270	
		$3,270 00
Less proceeds already returned claimant		166 39

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"ESPANA."

The *Espana* was seized on May 7, 1898, by the U. S. S. *Newport*, B. F. Tilley, U. S. Navy, commanding. She was 60 feet long, of 80 tons burden, and carried a cargo of 180 quintals of live fish. (Supplemental stipulated record, p. 3.) The agreed record

shows on behalf of claimant an appraised value of $9,000, and the following particular facts: The vessel was built at Regla by claimant in 1884; her net tonnage was 51 tons. The claimant states that it cost him about $10,000 to build her, and she was appraised in that amount (p. 2). Repairs were made on the vessel to the extent of $1,800 a few years previous to her capture (p. 3). The claimant estimates her value at the time of capture at $9,000. He states that she usually earned $300 to $350 each trip, after deducting expenses, and that she averaged about one trip per month (p. 2).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) says that he considers the claimants' valuation excessive; that the *Espana* was a Cuban-built boat, and at the time of sale 14 years of age; he considered $3,000 or $3,500 a fair valuation; she sold at the Government sale for $1,310. Witness Samuel Cates (p. 7) testifies that she was in a pretty bad condition and adds the following significant testimony: In reply to the question whether the price he paid, viz, $1,310, was a fair valuation, he said, "No; I didn't think it was a fair value. I thought the vessel was worth more than she brought. I offered to sell it to the owners for $3,500; they would not give that much money." He was then asked what he did sell it for, to which he replied $2,500; he put repairs on her costing (p. 8) from $150 to $200, and ultimately sold her, as stated, at $2,500, to a former owner. The computation is then as follows:

Value of vessel	$2,500	
Less repairs	150	
	2,350	
Cargo, 180 quintals fish, at $3	540	
		$2,890.00
Less proceeds already returned claimant		953.52

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"CUATRO DE SETIEMBRE."

The *Cuatro de Setiembre* was seized on April 27, 1898, by the U. S. S. *Helena*, Commander W. T. Swinburne, U. S. Navy, commanding. She was 60 feet long, of 30 tons burden, and carried a cargo of 150 quintals of live fish. (Supplemental stipulated record, p. 3.) The agreed record shows on behalf of claimant an appraised value of $5,000, and the following particular facts: Claimant states that this vessel was formerly the *Maria Madelena*, and was a Cuban-built boat; her net tonnage was 31.5; she was purchased by claimant in 1896 for the sum of $5,000 (p. 2); no repairs to any great extent were made on the vessel after her purchase (p. 3); claimant states that the vessel's annual earnings were estimated at 20 per cent net on the amount of her capital (p. 2).

The Government testimony is as follows: Marshal J. F. Horr (p. 8) says that he would say $1,000, at the outside, was a fair price for the vessel; that he based his estimate upon "her age and condition at the time of sale, and the price that she sold at;" that he thinks she was one of the old boats. (It will be noted that a portion of Horr's testimony in regard to the *Cuatro de Setiembre* is omitted in the agreed record, due to an

error of the clerk of the court below in omitting a page from the transcript of record in this case, and attention is therefore invited to pp. 27 and 28 in the *Lola* record, where this witness's testimony appears in full in regard to this vessel.) Witness John Lowe (p. 9) says that he paid $450 for her, and after her purchase, spent about $200 on her, and sold her for $1,500; he states that the vessel was sold to him cheap, and that a fair estimate of her value before he repaired her was $1,000; he sold her and another vessel "to parties in Havana;" this vessel was about 10 years old; recurring to the *Emma Lowe*, which Horr identified as the *Antonio y Paco*, and which he thought had cost $5,000 or a little more, Lowe himself testifies had cost him about $10,000. The computation is as follows:

Value of vessel	$1,500	
Less amount expended for repairs	200	
	1,300	
Cargo, 150 quintals of fish, at $3	450	
		$1,750.00
Less proceeds already returned claimant		103.67

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"SANTIAGO APOSTOL."

The *Santiago Apostol* was seized on May 8, 1898, by the U. S. S. *Mayflower*, M. R. S. Mackenzie, U. S. Navy, commanding. She was 78 feet long, of 70 tons burden, and carried a cargo of 190 quintals of live fish. (Supplemental stipulated record, p. 3.) The agreed record shows on behalf of claimant an appraised value of $10,000, and the following particular facts: The vessel was built in the port of Mariel in 1890, under the direction of the claimant. He states

her net tonnage as 90.40 tons, and places her valuation at about $10,000, basing same upon that given by the notarial certificate of her construction and the official certificate of appraisement of $9,980 and some sundry minor expenses made on her, which somewhat increased her value (p. 2). Repairs were made on her in 1894 to the extent of $1,200. Repairs were again made on her in 1897 to the extent of $1,300 (p. 3). She was valued by the harbor master on March 1, 1898, at $10,000 (p. 4).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) testifies that he would consider the valuation of $1,000 excessive; this evidently means $10,000, because he says immediately afterwards that he would consider $5,000 about her value in Key West. Witness Alfred Atchison (p. 8) testifies that he paid $2,700 for her and sold her for $4,000, which he considered a fair price under the circumstances; he found her in good condition, but made some repairs; he sold to parties in Havana under some complication which compelled him to take less than he otherwise could have obtained for her. Having in mind some business, perhaps the fish trade for the Havana market, he testifies that she would be worth about $5,000, which is in accordance with the marshal's testimony. The computation is then as follows:

Value of vessel	$5,000	
Cargo, 190 quintals fish, at $3	570	
		$5,570.00
Less proceeds already returned claimant		2,315.29

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

The amount of damages based upon the foregoing figures, including interest, etc., are not worked out here. The significant thing is to reach a correct basis of value, and therefore of damages.

If the court itself reforms the decrees below or directs their reformation, in accordance with the views as to proper reductions urged by the Government, the full computation presented in the *Paquete* and *Lola* brief offers a guide for determining the due amount in each decree.

The observations of the other brief as to the naval captors' responsibility apply equally here. I submit that on both points the decrees below should be reversed.

HENRY M. HOYT,
Solicitor-General.

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FILE COPY.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

Office Supreme Court U. S.
FILED
MAR 20 1903
JAMES H. McKENNEY,
Clerk.

Nos. 580-589.

THE UNITED STATES, LIBELANT, APPELLANT, ET AL.

v.

THE PODER DE DIOS; JULIAN BENGOCHEA ET AL., CLAIMANTS, APPELLEES, ET AL.

[AND NINE OTHER CASES.]

BRIEF FOR APPELLEES.

CONVERS & KIRLIN,
Proctors for Appellees.

J. PARKER KIRLIN,
Advocate.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 6369

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE PODER DE DIOS;
JULIAN BENGOCHEA ET AL., *Claimants, Appellees.* — No. 580.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE ANTONIO Y PACO;
ANGEL LOPEZ ET AL., *Claimants, Appellees.* — No. 581.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE ENGRACIA;
FRANCISCO GONZALES ET AL., *Claimants, Appellees.* — No. 582.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE SEVERITO;
DOMINGO TROCHA ET AL., *Claimants, Appellees.* — No. 583.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE ANTONIO SUAREZ;
VILAR ET AL., *Claimants, Appellees.* — No. 584.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE FERNANDITO;
DOMINGO TROCHA ET AL., *Claimants, Appellees.* — No. 585.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE ORIENTE;
MANUEL CARILLO, *Claimant, Appellee.*
No. 586.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE ESPAÑA;
SANTIAGO DUES, *Claimant, Appellee.*
No. 587.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE CUATRO DE SETIEMBRE;
LEONARDO BUNUEL, *Claimant, Appellee.*
No. 588.

THE UNITED STATES, *Libelant, Appellant,*
v.
THE SANTIAGO APOSTOL;
CÆSAR DE LA TORRE, *Claimant, Appellee.*
No. 589.

BRIEF FOR THE APPELLEES.

These are appeals from the final decrees of the district court for the southern district of Florida, awarding damages to the claimants of the above-named vessels. The cases are similar in all respects to those of the Paquete Habana and the Lola. At the suggestion of the appellant, the records have been abbreviated by omitting all the formal parts which are common to these cases and to those of the Paquete Habana and the Lola, on the agreement, however, that as to the parts of the record omitted counsel are at liberty to refer to identical or similar portions of the records in those cases.

The assignments of error are alike in all the cases. The

exceptions to the commissioner's reports are set forth in the Paquete Habana Record, p. 59, and were entitled in all the cases.

The abridged records in the above-entitled cases contain all the proofs offered by the claimants in each case and extracts from so much of the testimony of the witnesses for the Government as relate to that case. The complete depositions of all the Government witnesses are printed in the Paquete Habana Record, pp. 32–53. Under the stipulation abbreviating the record, counsel for either party have leave to refer to such parts of the testimony of the Government witnesses in the Paquete Habana record as are not printed in the separate records in these cases in respect of any matter omitted in the separate records.

Reference will be made in this brief to the Paquete Habana record, in pursuance of the stipulation, touching such parts of the complete depositions as may be considered material, as the several cases are separately discussed, mainly with a view of showing the lack of qualification of the Government witnesses to speak as experts in relation to the value of fishing-smack property.

The commissioner's reports in the several cases are printed in the abbreviated records. The commissioner's opinion, which is entitled in all the cases, is not reprinted in the several abbreviated records, but appears at length in the Paquete Habana Record at pages 55–58.

ARGUMENT.

The same questions that have been argued in the Paquete Habana and the Lola are raised by the Government in these cases, viz:

1. As to the measure and quantum of damages.

2. The responsibility for the damages as between the Government and the captors.

The claimants do not conceive it to be necessary to re-argue at length in this brief the matters of principle which have been fully dealt with in the brief in Paquete Habana and the Lola.

The proceedings have been identical in all the cases.

It was stipulated in these cases, as in the *Paquete Habana*, page 22: "That the proceeds of sale of the above-named vessel, together with the proceeds of sale of any of her cargo, be restored to the claimants, with compensatory damages and with costs;" and "that such damages and costs shall be charged against the United States or the naval captors, or apportioned between the United States and the naval captors, as to justice may appertain and as the legal responsibility therefor may appear; and that either party shall have the right to review the decree * * * on the question of the amount of damages; * * * and the

United States or naval captors or the claimants shall have the right to review such decree on the question whether the ultimate legal responsibility for such costs and damages rests upon the United States or the naval captors."

The assessment of damages, by consent of the parties, was referred to Eugene O. Locke, United States commissioner. The recital of these agreements appears, in each case, at the beginning of the final decrees, (*e. g.*, *The Poder de Dios*, *Rec.*, p. 11).

In every case the exceptions to the report of the commissioner were overruled, and his report was confirmed. No costs were asked for or awarded, but the commissioner's fee in each case was included in the final decree, and by inadvertence is called costs.

The claimants ask leave to refer to the argument on the principal points in the Paquete Habana brief as follows:

1. The claimants are entitled to compensation for the value of the property taken at the place and time of the capture (*Paquete Brief*, pp. 11, 30–41).

2. The consent reference to Mr. Locke, whose special acquaintance with the conditions affecting the value of the property entitles his decision in the several cases, affirmed as it was by the court below, to the greatest possible weight, if, under the circumstances, it is not to be taken as conclusive on the question of the amount of

damages (*Paquete Brief*, pp. 11–15; *The Grace Girdler*, 7 Wall., 196, 204; *U. S. v. Officers, &c., of the Mangrove*, decided February 23, 1903).

3. The exceptions to the report are insufficient to raise the questions attempted to be discussed under the first, second, and third assignments of error (*Paquete Rec.*, p. 66; *Paquete Brief*, pp. 28–30).

4. If the questions sought to be raised by these assignments of error are open in this court, then in each case the report is supported by the proofs and no reversible error has been established.

In this connection the claimants urge the want of qualification of Mr. Horr and the Key West witnesses, and emphasize the fact that their evidence relates only to the value of the vessels in that place, where there was no demand or business for them, and that they speak of a time long subsequent to the capture (*Paquete Brief*, pp. 30–41).

5. No question of interest or costs has been raised here by the exceptions to the commissioner's report or by the assignment of errors (*Paquete Brief*, pp. 40–43).

6. The district judge correctly ruled that the damages were payable by the United States (*Paquete Brief*, pp. 40–77). Under the Prize Acts, the ratification of the captures by the Government, which founded libels thereon, may well

be taken as relieving the naval captors from liability, even if they had been before the court as parties (*Lamar v. Browne*, 92 U. S., 187).

The facts in relation to the different vessels will now be examined. It may be observed that there is some diversity in the statements of the different witnesses with regard to the tonnage of the vessels. The statements contained in the Supplemental Stipulation of Facts are those taken down by the prize commissioner from the crew of the vessel at the time of the capture. Some of them are obviously incorrect. In this brief the tonnages given are those stated by the owners and by the harbor master of the port of Havana, which are probably more nearly correct.

1. THE PODER DE DIOS, No. 580.

This vessel was purchased by Julian Bengochea and Francisco Gonzales in 1896 for $4,000 cash, Spanish gold. The original bill of sale was produced before the commissioner. The boat was built originally in Nassau, N. P. Her net tonnage was 51 tons. Shortly after her purchase repairs were put upon her to the extent of $2,500, at the ship yard of Ceferino Miranda, in Regla. The value of the vessel at the time of her capture was $6,500, Spanish gold (*Bengochea*, pp. 2, 3, 4). Her usual earnings were about 20 per cent. on the capital invested in her (*Id.*, p. 2).

JUAN LLURIA, ship-builder and harbor master, testified that it was his duty, by virtue of his office, to inspect, examine, and value the vessel, and to inspect all repairs that were made to her in Havana. He said: "I have inspected and valued the fishing smack Poder de Dios to be worth, on the 1st of March, 1898, $6,500, Spanish gold, being my appraisement of said vessel upon her special conditions, and my constant inspection of vessels of her class" (p. 4). He annexed his certificate to the same effect, in which he certified that the body of the vessel, her rigging, sails, gearing, ballast, capstan, anchors and chains, galley, caboose, and outfit, sailing compass, lanterns and side lights, and other appurtenances, and one boat with equipments, were all in good condition (p. 5).

GANDON and SUAREZ testified that the value of fresh fish in Havana at the time of the capture was $10, Spanish silver, a quintal (pp. 5, 6).

The foregoing depositions were taken in August, 1900.

The Government has produced no evidence of the value of this vessel in Cuba at the time of her capture.

At the final hearing, in August, 1901, the United States attorney examined Mr. Horr, the marshal of the district, and after final hearing he took and submitted to the commissioner the depositions of Mr. Cash and Mr. Curry, of Key West.

Mr. HORR, whose evidence was received subject to the claimants' objection that he was not qualified to speak as

an expert witness, expressed the opinion that the value of the vessel was $2,500 in Key West. He stated that he did not recollect the exact condition of the boat (*Horr*, p. 7).

In respect of his own qualifications as a witness on the subject of values, Mr. Horr, in speaking of one of the other smacks, said: "She is a fishing smack and *a class of vessel that I haven't had anything to do with*" (*Paquete Habana Rec.*, p. 33). He stated in respect of another boat: "I can't possibly place a valuation, on account of not recalling her condition" (*Paquete Rec.*, p. 35). In regard to still another he said: "I hardly think it will be a reliable estimate" (*Lola Rec.*, p. 27). He further said:

"Q. Captain, all of the values that you have given with reference to the different vessels have been values at Key West? A. Yes.

"Q. You do not propose, as I understand it, to speak of values in Havana? A. No, sir; don't know anything other than what I have known them to pay for vessels coming over to Key West" (*Paquete Rec.*, p. 37).

Mr. Horr had had no experience in the building of fishing boats and knew nothing, of his own knowledge, as to the cost of building (*Id.*, p. 38). His hearsay information that they could be built in Key West for $90 a ton was unreliable (*id.*, p. 34), though in that estimate he apparently included nothing but the hull of the vessel (*Id.*, p. 34). This $90 estimate was evidently an inference on his part from his recollection that Mr. Lowe had said that the smack

Emma Lowe, which he built, had cost him $5,000 (*Id.*, p. 37). Mr. Lowe's own evidence shows that the Emma Lowe had cost him $10,000 (*Lowe, Paquete Rec.*, p. 47).

Mr. Horr's estimates and his recollections therefore seem to be erroneous to the extent of about 100 per cent. He did not claim to be an expert on values, and plainly he was not.

The commissioner, in his final decision, rightly sustained the claimants' objections to Mr. Horr's testimony, and disregarded it as that of an unqualified witness (*Paquete Rec.*, p. 56).

Mr. Cash purchased this vessel and another on their sale by the marshal. He admits that at the sale the vessels "brought less than we expected to pay for them, as a matter of speculation, if the fishing business opened to them" (p. 8). He subsequently sold the Poder de Dios for $1,500 (p. 8). It appears from other parts of his testimony that the Poder de Dios was "in a very fair condition" (*Paquete Rec.*, p. 43). He bought the vessel for the purpose of engaging in the fishing business, if that industry should be revived. She was sold a short time afterwards, in his absence, by his partner, Mr. Curry, when it was found that the fishing business would not be revived (*Id.*, p. 44). He does not state the name of the person to whom he sold the vessel, nor when nor where she was sold (*Id.*, p. 44). His partner, Mr. Curry, who sold the vessel, admitted that he was not an authority on the question of her value (*Paquete Rec.*, p. 52). He says that the Poder de Dios was sold for

$1,500, but he supposed she was worth $2,800 (*Poder de Dios Rec.*, p. 9). He does not state when, where, or to whom she was sold. Apart from this transaction, he had never had any experience in buying or selling fishing smacks (*Poder de Dios Rec.*, p. 10).

It is to be observed that neither of these witnesses assumed to express any opinion as to the value of vessels in Cuba at the time of their capture, or at any time.

The commissioner reported the value of this vessel at the time of her capture as $6,500. To this he added the value of the fresh fish, interest, and expenses, making the total award $8,507.30 (*Rec.*, p. 10; *Opinion, Paquete Rec.*, pp. 55–58). The report was confirmed by the court (*P. D. Rec.*, p. 11).

It is submitted that the report is amply supported by the proofs, and that no reversible error in regard to it is shown (*The Grace Girdler*, 7 Wall., 196, 204; *Kimberley v. Arms Co.*, 121 U. S., 512, 524; *Tilghman v. Proctor*, 125 U. S., 136, 149; *The Richmond*, 103 U. S., 540, 543; *The Elton*, 83 Fed., 519, 520).

2. THE ANTONIO Y PACO, No. 581.

This vessel was purchased by the firm of Vilar, Senra & Co., who owned two-thirds, and Angel Lopez, who owned one-third of the boat, from the firm of C. Garcia y Cia, in January, 1896, for the sum of $6,000. After her purchase repairs and improvements were made upon her, and her

carrying capacity was increased by the addition of a new well. The tonnage of the vessel is 42 tons net. The repairs which were made to the vessel were made between October, 1896, and January 1, 1897. After the completion of these repairs and on January 1, 1898, the value of the vessel was $8,250, Spanish gold (*Vilar*, pp. 2, 3, 4). The book accounts of the firm of Vilar & Co., in relation to their two-thirds interest in the vessel from January 1, 1896, showing the capital invested, the repairs, outlays, and proceeds of catch, were produced and annexed to Vilar's deposition (*Antonio Rec.*, pp. 5–9). The average earnings of the vessel were about 18 per cent. per annum, and are shown in the book extracts relating to the two-thirds ownership of Mr. Vilar's firm (*Vilar*, ans. to 3d int., pp. 2, 3; *Statement*, pp. 8, 9).

JUAN LLURIA, ship-builder and harbor master, testified that it was his duty, by virtue of his office, to inspect, examine and value the vessel, and to inspect all repairs that were made to her in Havana. He said: "I have inspected and valued the fishing smack Antonio y Paco to be worth, on March 1, 1898, $9,000 Spanish gold, basing my appraisement of said vessel upon her special condition, and my constant inspection of vessels of her class" (p. 9). He annexes his certificate, in which he certifies that the vessel has a wooden hull, is schooner-rigged; that her rigging is tight and staunch; that her sails and gearing are complete,

with the necessary iron ballast, capstan, two anchors and chains, galley, caboose and outfit, sailing compass, lanterns and side lights and other appurtenances, and one boat, with equipments, all in good condition, all of which he appraises in the sum of $9,000, Spanish gold (p. 10).

GANDON and SUAREZ testified that the fresh fish, at the time of the capture, were of the value of $10, Spanish silver, per quintal (pp. 10, 11).

Mr. HORR, in behalf of the United States, estimated the value of the vessel at $3,500, in the belief that she had formerly been the Emma Lowe (p. 12). This estimate was based on the further assumption, on his part, that the Emma Lowe had originally cost $5,000 (*Paquete Rec.*, p. 37). It is seen from this that he meant to estimate the vessel at $1,500 less than the original cost of the Emma Lowe. The testimony does not show whether she was the vessel which had formerly been called the Emma Lowe or not, though her tonnage, which is stated by Lluria to be 46 tons' burden (p. 10), was but three tons less than that of the Emma Lowe (*Paquete Rec.*, p. 47). The Emma Lowe, however, had cost $10,000 (*Lowe*, *Paquete Rec.*, p. 47). If the basis of Mr. Horr's estimate be corrected to the extent of the error in regard to the cost of the Emma Lowe, and the deduction of $1,500 be made from the real cost price of that vessel, the result would be that his estimate of the value of

the vessel would be $8,500, which is about that given by her owner (*Villar*, p. 2).

The absence of qualifications on the part of Mr. Horr to speak as an expert in relation to the value of fishing-smack property and the ruling of the commissioner thereon have already been referred to (*ante*, p. 9). It is only necessary to mention further that his entire evidence, when originally offered, was duly objected to, and was received subject to the claimant's objection, which was ultimately sustained (*Paquete Rec.*, pp. 36, 37, 56).

Mr. CASH testified that he purchased the vessel at the marshal's sale for $1,910 (p. 12), but that this was less than he expected to pay for her (p. 13). He sold her for $2,900, but he does not state where, when, or to whom she was sold (p. 13).

Mr. CURRY, the other witness examined by the Government in relation to this vessel, also states that the firm of Cash & Curry sold the Antonio y Paco for $2,900, but he estimates that she was worth about $4,000 (p. 14). He adds, however, that he had never had any experience in buying and selling smacks, except on this occasion (p. 14), and he expressly admits that he is not an authority as to the value of such vessels (*Curry*, *Paquete Rec.*, p. 52).

It is to be observed that none of the witnesses examined by the Government assumed to express any opinion as to the value of the vessel in Cuba at the time of the capture or at any time.

The commissioner reported the value of this vessel, at the time of her capture, to have been $8,250, to which he added the value of the fresh fish, interest, and expenses, making in the aggregate $10,003.30 (*Rec.*, p. 15; *Opinion*, *Paquete Rec.*, pp. 55–58). His report was confirmed by the court (*Antonio Rec.*, p. 16).

It is submitted that the report is amply sustained by the proofs and that no reversible error in regard to it is shown. (See cases cited *ante*, p. 11.)

3. THE ENGRACIA, No. 582.

This vessel was purchased by Francisco Gonzales, Pablo Pereda, Manuel Gonzales, and Manuel Granados, each of whom owned a quarter interest in her, in 1894 or 1895 (*Gonzales*, p. 2). Her purchase price was $4,500 gold. Repairs were subsequently made to the vessel, at the ship yard of Ceferino Miranda, on two occasions to the extent of something less than $1,000 each time (p. 2). After the repairs were made and at the time of her capture the vessel was of the value of $5,500, Spanish gold (p. 2).

JUAN LLURIA, ship builder and harbor master of Havana, testified that it was his duty, by virtue of his position, to inspect, examine, and value the vessel and such repairs as were made to her in Havana. He adds: "I have inspected and valued the Spanish fishing smack Engracia to be worth, on March 1, 1898, $5,500, Spanish gold, basing my appraise-

ment of such vessel upon her special conditions, and my constant inspection of vessels of her class" (p. 4). He appends his certificate, in which he states that the vessel is of 42 tons burden, has a wooden hull, is schooner-rigged, rigging tight and staunch, sails and gearing complete, with necessary iron ballast, capstan, two anchors and chains, galley, caboose, and outfit, sailing compass, lanterns and side lights, and other appurtenances and one boat with the equipments, all in good condition, which he appraises in the sum of $5,500, Spanish gold (p. 4).

GANDON and SUAREZ testify that the value of the fresh fish at the time of the capture was $10, Spanish silver, per quintal (pp. 4, 5).

Mr. HORR, the first witness examined on behalf of the United States, declined to express any opinion as to the value of this vessel, on the ground that he did not recall her well enough to do so (p. 7).

Mr. CURRY, whose evidence is printed in the record (p. 7), testifies in relation to a vessel which he calls the "Lola Engracia." It is evident, however, that he is speaking of the Lola, and not of the Engracia, as he states that he paid $800 for the Lola (p. 7), which was the amount realized on the sale of that boat (*Lola Rec.*, p. 17), while the sale price of the Engracia was $1,000 (*Engracia Rec.*, p. 1). The witness who purchased the Engracia at the marshal's sale was John Lowe (*Paquete Rec.*, p. 47). He also describes her as the "Lola Engracia," but states that he paid $1,000 for her,

the amount for which the Engracia was sold. He sold the Engracia subsequently to parties in Havana, whose names are not stated, for $2,000 (*Lowe, Paquete Rec.*, pp. 46, 47). He does not state, however, when the sale was made. He purchased the vessel on speculation, and sold her because there was no business for her in Key West (*Paquete Rec.*, p. 47).

None of the witnesses examined for the Government assumed to be qualified to express any opinion of the value of the vessel in Cuba, at the time of her capture or at any time.

The commissioner reported the value of this vessel, at the time of her capture, to have been $5,500. The total award for the value of the vessel, her fresh fish, and for interest and expenses, was $7,218.08 (p. 10; *Opinion, Paquete Rec.*, pp. 55–58). The report was duly confirmed (*Engracia Rec.*, p. 64).

It is submitted that the report is fully supported by the proofs, and that no reversible error in regard to it is shown. (See cases *ante*, p. 11.)

4. THE SEVERITO, No. 583.

The owners of this vessel at the time of her capture were Domingo Trocha and Modesto Llanuge, each of whom owned a half interest (*Trocha*, p. 2). She was a vessel of 35 or 41 tons burden (*Stip. as to Facts*, p. 2; *Lluria*, p. 5). She

was purchased by Trocha and Llanuge, August 19, 1896, for $3,000 Spanish gold, and repairs were put upon her between October, 1896, and January, 1897, by a master ship-carpenter named Antonio Deus. Her repairs consisted of a complete renovation, new well, planking, rigging, and sails. The repairs cost about $4,000, and the labor and rigging something over $600 additional. Trocha places her valuation at the time of the capture in round numbers at $8,000 (*Trocha*, pp. 2, 3).

LLURIA, who had inspected, examined, and valued the vessel and her repairs, valued her, on March 1, 1898, at $8,000, Spanish gold, including all her tackle, apparel, and furniture, which, he states, were in good condition (pp. 4, 5).

GANDON and SUAREZ testifies that the value of the fresh fish at the time of the capture was $10, Spanish silver, per quintal.

Mr. HORR was unable to express any opinion as to the value of this vessel, but was under the impression that $8,000 was excessive, from her tonnage and her age (p. 7). Mr. Horr, as has already been pointed out (*ante*, p. 9), did not profess to be qualified as an expert on the value of this class of tonnage.

Mr. M. CURRY, who purchased this vessel at the marshal's sale for $1,300, stated that he had no experience in buying or selling smacks, except on this occasion (pp. 7, 8), and that he had never bought or sold sailing vessels

of any class (*Paquete Rec.*, p. 45). His firm sold the Severito for $3,000. Nothing is said as to when, where, or to whom the vessel was sold, and he expressed no opinion as to her real value.

The commissioner found the value of this vessel at the time of the capture to have been $8,000, and his total report for the vessel, fresh fish, interest, and expenses was $9,566.49 (Rec., p. 9; *Opinion, Paquete Rec.*, pp. 55–58). The report was duly confirmed by the court (*Severito Rec.*, pp. 9, 10).

It is submitted that the report is fully justified by the proofs, and that no reversible error in regard to it is shown. (See cases *ante*, p. 11.)

5. THE ANTONIO SUAREZ, No. 584.

This vessel, at the time of her capture, was owned by the firm of Vilar, Senra & Co. (*Vilar*, p. 2). They took over the vessel in January, 1896, on a valuation of $10,000, in the following manner: Vilar, Senra & Co. is the successor of the former firm of C. Garcia & Co., and upon the dissolution and liquidation of the latter firm they took charge of its business as it stood, and assumed its obligations. The Antonio Suarez appeared in the general balance as valued at the sum of $10,000, Spanish gold; was accepted at that price, and so transferred and entered in the books of the new firm. The firm of C. Garcia & Co.

was dissolved and the firm of Vilar, Senra & Co. was constituted with several members, which took over and assumed all the credits and obligations of the old firm, and continued its business under the new style, according to duly recorded articles of copartnership (*Vilar*, pp. 2, 3).

The vessel was of 34.74 tons net (*Vilar*, p. 2) and 42 tons gross burden (*Lluria*, p. 7). No extensive repairs were effected after her purchase by Vilar's firm, but the usual and ordinary maintenance repairs of each trip, as might be required, in rigging, sails, caulking, careening, painting, &c., were made, and appear in the accounts of the vessel's disbursements, which were produced by the witness and marked Exhibit A to his deposition (*Vilar*, p. 4). This exhibit, however, is not printed.

The witness valued the boat when captured at the sum of $10,000, Spanish gold (*Vilar*, p. 2).

LLURIA who inspected, examined, and valued the vessel and her repairs, estimated her value on March 1, 1898, as $9,000, Spanish gold, basing his estimate on her general condition and the condition of her tackle, apparel, and furniture, all of which were good (pp. 6, 7).

GANDON and SUAREZ testified that the value of her fresh fish at the time of her capture was $10, Spanish silver, per quintal (pp. 7, 18).

Mr. HORR stated, subject to the claimant's objection to his qualifications, that in his opinion $3,000 was an outside valuation for the vessel (p. 9). Reference is made to what

has previously been stated on the subject of his qualifications (*ante*, p. 9).

REEDY, who purchased this vessel at the marshal's sale for $1,260 and subsequently sold her for $2,300 because there was no demand for vessels of this character at Key West and she was "eating her head off," and "it was a dead loss to keep her," was of opinion that she was worth as much as the amount for which she was appraised by Lluria (*Reedy*, pp. 9–11). He states that she appeared to be almost new; that her timbers and planks were in first-class condition, and that he was given to understand that she had cost $8,000 before the war. He states that she could not have been built in Key West for that money, and that she was a better and stronger vessel than one for which Mr. Lowe had paid $10,000 (p. 11).

The commissioner found the value of this vessel when captured to have been $9,000, and his total report, including vessel, fresh fish, interest, and expenses, was $10,945 (*Rec.*, p. 11; *Opinion, Paquete Rec.*, pp. 55–58). The report was duly confirmed by the court (*A. Suarez Rec.*, p. 12).

It is submitted that his report is amply supported by the evidence, and that no reversible error in regard to it is shown. (See cases *ante* p. 11.)

6. THE FERNANDITO, No. 585.

This vessel was owned, at the time of her capture, by Domingo Trocha and Modesto Llangue, each of whom owned a half interest. Trocha paid $2,750, Spanish gold, for his half interest in August, 1896. The vessel was small, but had a deep well, with considerable carrying capacity, and consequently earned considerable money (*Trocha*, p. 2). She was of 26 tons burden (*Lluria*, p. 4). Her earnings are estimated to have been from 24 to 28 per cent. on her capital per annum. She had received repairs such as were incident to ordinary maintenance, including painting, replacing cables, sails, parts of rigging, &c. (p. 3). She was worth at the time of her capture $5,500 (*Trocha*, p. 2). Lluria estimated her value on March 1, 1898, to be that amount, and stated that the vessel, her tackle, apparel, and furniture, were all in good condition (p. 2).

GANDON and SUAREZ testified to the value of the fresh fish, as in the other cases.

Mr. HORR stated, subject to objection, that he did not think the vessel was worth the amount at which she was valued, but he did not express any opinion as to her actual value (p. 3). There was no other evidence on the subject.

The commissioner found the value of the vessel at the time of her capture to have been $5,500, and, adding the value of the fresh fish, interest, and expenses, he awarded the claimants the sum of $7,471.94 (p. 7; *Opinion, Paquete*

Rec., pp. 55–58). The report was duly confirmed (*Fernandito Rec.*, p. 8).

It is submitted that the report is fully sustained by the evidence (cases cited *ante*, p. 11).

7. THE ORIENTE, No. 586.

This vessel was owned by Manuel Carillo. He had purchased her in Key West, about twenty-three years prior to the capture, for the sum of $1,000. It cost him about $500 to get her transferred to the Spanish flag. He repaired her at that time to the extent of about $1,000. Two years later he careened her and made extensive repairs, which cost about $5,000. Two years later he careened her again, in the Sama ship yard, and the repairs then cost him about $8,000. It is evident that the vessel had been substantially rebuilt. Although previous to her capture he had been offered $6,000 for the vessel, she had been officially appraised at $5,000, and Carillo gives that sum as her value at the time of the capture (*Carillo*, p. 2). A copy of a deed showing the cancellation of a mortgage for a part of the repairs in August, 1882, was produced (p. 4). The vessel earned net profits of from $250 to $300, silver, monthly (p. 2).

LLURIA states that the value of the vessel, on March 1, 1898, was $5,000, Spanish gold, and that her body, tackle, and furniture were all at that time in good condition (pp. 5, 6).

GANDON and SUAREZ testify to the value of the fresh fish, as in the other cases.

Mr. HORR was unable to place any estimate on the value of this vessel (p. 8).

Mr. ATCHISON states that if the Cuban fish markets had been open to residents of Key West the vessel would have been worth, for fishing purposes, in Key West, about $3,500. With that market closed, he estimated her value at about $2,500 or $3,000 (pp. 8, 9). He states that the condition of the vessel was good (p. 9). Mr. Atchison was deputy United States marshal, and did not claim to possess any qualifications which would entitle him to speak as to the value of the vessel in Cuba at the time of her capture.

The commissioner reported the value of this vessel, at the time of the capture, as $5,000, and, adding the value of the fresh fish, interest, and expenses, awarded in all the sum of $6,827.72 (*Rec.*, p. 10; *Opinion, Paquite Rec.*, pp. 55–58). The report was duly confirmed (*Oriente Rec.*, p. 11).

It is submitted that the report is fully sustained by the evidence, and that no reversible error in regard to it is shown. (See cases *ante*, p. 11.)

8. THE ESPANA, No. 587.

This vessel was owned, at the time of her capture, by Santiago Deus. He had built her in Regla, in 1884, at a cost of $10,000. She has received considerable repairs in the way of a new well, sails, rigging, &c. She was of 51 tons net burden. The cost of the new well and repairs incident to it, which were made seven or eight years before the capture, had been about $1,800. Her value at the time of her capture, in May, 1898, was $9,000 gold (*Deus*, pp. 2, 3). The net earnings of the vessel were from $300 to $350 each trip on gross earnings of from $800 to $900. She averaged about one trip per month. The vessel had been specially built for the fishing business, with a large well, and earned proportionately more than other vessels which had been adapted to that business without having been built specially for it originally (*Deus*, pp. 2, 3).

LLURIA inspected and valued the vessel as worth, on March 1, 1898, $9,000. He states that her body, tackle, apparel, and furniture were all at that time in good condition (p. 4).

GANDON and SUAREZ testified to the value of the fresh fish as in the other cases.

Mr. HORR, over the claimant's objection, estimated her value at about $3,500 (p. 7). Reference is made to what has been previously stated with regard to the qualifications of this witness (*ante*, p. 9).

Mr. CATES, who purchased the vessel for $1,310 at the marshal's sale, states that he "offered to sell it to the owners for $3,500; they would not give that much money" (p. 7). He does not state the names of those to whom he refers as the owners, nor when nor where he made the offer, nor does it appear that he knew who the former owners of the vessel were. Before he resold her he had had her cut down and her tonnage reduced from 58 to 48 tons (p. 9). In this changed condition he says that he sold her to the same owner to whom she had previously belonged (p. 9). Again, there is no statement of the name of the owner or of any knowledge on his part on that subject. The time of the sale is not stated. He sold the vessel because there was no demand or use for her in Key West (p. 9). He expressed no opinion as to her real value, either in Key West or Havana. He had never bought or sold fishing smacks before (p. 9).

Counsel for the Government contends that, in this case, the damages should be taken at the sum for which it is claimed that the vessel was resold, with interest to cover the loss of her use between the time of her capture and the resale, and interest on the amount of the resale from its date to the date of final decree. It would seem to be manifest, however, that if, under any circumstances, it would be proper to adopt such a rule of damages, it would not be so in this case. The undisputed testimony shows that interest would not compensate the owner for the loss of use between

the time of her capture and the time of the alleged resale. The average net earnings of the boat had been from $300 to $350 a month (*Deus*, p. 2). The date of the resale is not given; but, as the treaty of peace was not signed until eight months after the capture, and the vessel was not resold until after it was discovered that the Cuban markets were not to be reopened to United States fishing vessels, it is improbable that the sale occurred within less than a year after the capture. The loss of use would therefore amount to from $3,600 to $4,000; and, taking into account an allowance for depreciation resulting from the reduction in her size of 10 tons by Mr. Cates, or, say, nearly one-fifth of her value, before capture, it will be seen that the damages, if they had been assessed on this theory, would not have been far different from those which have been awarded.

It should be mentioned, however, that no exception was taken to the commissioner's report on the ground that he did not assess the damages on this theory, nor is there any assignment of error on this point (*Paquete Rec.*, pp. 59, 60, 66). In fact, this point has never been suggested in the case until the argument in this court on this appeal.

The commissioner, following the same rule as in the other cases, found the value of the vessel, at the time of her capture, to have been $9,000, and, adding the value of the fresh fish, interest, and expenses, awarded damages aggregating the sum of $11,737.69 (*Rec.*, p. 10; *Opinion, Paquete Rec.*, pp. 55–58). The report was duly confirmed by the court (*España Rec.*, p. 11).

It is submitted that the report is fully sustained by the evidence, and that no reversible error in regard to it is shown. (See cases *ante*, p. 11.)

9. THE CUATRO DE SETIEMBRE, No. 588.

This vessel was purchased by Leonardo Bunuel in 1896 for $5,000, Spanish gold, in cash. She was a vessel of 33 tons gross, 31 tons net, and was Cuban built. She had formerly been named the Maria de Madelena, but in consequence of a hurricane in 1888 she was wrecked and nearly destroyed at Mariel, after which she was brought to Havana, extensively repaired, and renamed the Cuatro de Setiembre. Only the usual maintenance repairs had been put upon her since her purchase by Bunuel, less than two years before her capture. Since Bunuel had owned the vessel her net earnings on his share of the catch had been between $5,000 and $6,000 (*Casteleiro*, pp. 2, 3).

JUAN LLURIA, ship-builder and harbor master of Havana, stated that in accordance with his duty he had inspected, examined, and valued the vessel, and that on March 1, 1898, she was worth $5,000, Spanish gold. His appraisement was based upon the condition of the vessel and his inspection of her and her repairs. He annexes a certificate stating that the body, rigging, tackle, apparel, and furniture of the vessel were all complete and in good condition (p. 4).

GANDON and SUAREZ testify as to the value of the fresh fish, as in the other cases (pp. 5, 6).

Mr. HORR, the first witness examined for the Government, after stating that he had not had any experience with this class of vessels (p. 7), and that any estimate he would give of her "I hardly think * * * will be a reliable estimate" (p. 8), first expressed, over the claimants' objection, the opinion that she was worth $1,000 (p. 7), and on that opinion being excluded by the commissioner (p. 8) raised his estimate to $2,500, adding, "I don't recollect the exact condition of this boat" (p. 8). The witness did not pretend to possess any qualifications which would have justified the expression of an opinion on his part, and what he did say on the subject related to values in Key West. As to Mr. Horr's qualifications generally, see *ante*, p. 9.

Mr. LOWE testified that he purchased this vessel at the marshal's sale for $450, and resold her to parties in Havana for $1,500 (pp. 9, 10). He does not state the time of the sale, nor the parties to whom he sold. He purchased the vessel on speculation, and sold her when he found that no change was contemplated in the Cuban regulations in regard to fishing, and accordingly that the vessel could not be profitably employed in that business from Key West (*Paquete Rec.*, p. 47). Mr. Lowe expressed no opinion as to the value of the vessel in Cuba.

The commissioner reported the value of the vessel when

captured as $5,000, and, adding the value of her fresh fish, interest, and expenses, made a total award to the claimant of $7,285.75 (p. 11; *Opinion, Paquete Rec.*, pp. 55–58). The report was duly confirmed (*Cuatro de Setiembre Rec.*, p. 12).

It is submitted that the report is justified by the proofs, and that no reversible error in regard to it has been shown. (See cases *ante*, p. 11).

10. THE SANTIAGO APOSTOL, No. 589.

This vessel was built by Cæsar de la Torre, at Mariel, in 1890. The owner paid in cash for all the labor and material as it progressed, and then presented accounts therefor, with an official certificate of her measurement and value, for registry at the office of the captain of the port, in accordance with the laws then in force, and thereupon the vessel was officially appraised at $9,980, Spanish gold. Other items of expense put upon the vessel somewhat increased her value at the time of her construction. In September, 1894, repairs to the extent of $1,200 were made upon her at the ship yard of Ceferino Miranda. Again, in 1897, other repairs were made upon her, including a new bowsprit, repairs to the bow, new blocks, windlass, &c., which cost $1,300. The latter repairs were made at the same place. Her value at the time of capture is stated by the owner to have been about $10,000 (*Torre*, pp. 2–3). The net tonnage of the vessel is stated in one

part of the record as 90 tons (*Torre*, p. 2), and in other parts as 70 tons (*Supplemental Stipulation as to Facts*, p. 3).

JUAN LLURIA stated that he had inspected, examined, and valued the vessel on March 1, 1898, at the sum of $10,000, Spanish gold, basing his appraisement upon the special condition of the vessel and upon an inspection of her. He appends his certificate, in which he states that the body, rigging, tackle, apparel, and furniture of the vessel were all complete and in good condition at that time (pp. 4, 5).

Mr. HORR testified, subject to objection, that he considered the value of this vessel in Key West to have been about $5,000, but the objection to his testimony was subsequently sustained. With reference to Mr. Horr's qualifications, see *ante*, p. 9. He expressed no opinion of the value of the vessel in Cuba.

Mr. ATCHINSON, deputy marshal, purchased the vessel at marshal's sale for $2,700, and subsequently sold her to parties in Havana for $4,000. He does not state when or to whom the sale was made. He thought that if the Cuban markets had been opened to the vessel she would have been worth in Key West about $3,500. This witness was obviously without any qualifications which entitled him to express an opinion as to the value of the vessel (p. 10). He did not assume to express any opinion as to her value in Cuba.

The commissioner reported the value of the vessel, when

captured, as $10,000, and, adding the value of her fresh fish, interest, and expenses, awarded the sum of $11,632.74 (p. 10). His report was duly confirmed by the court (*8 Apostol Rec.*, p. 11).

It is submitted that the report is sustained by the evidence, and that no reversible error in regard to it has been shown. (See cases *ante*, p. 11.)

It may be permissible to remark, further, in conclusion, that the boats, though varying somewhat in size and tonnage, were all of the usual class of coast fishing vessels employed in the littoral waters of the Gulf. They are such boats and of such sizes as our own subjects had built and employed there, so long as it was profitable to do so. Many of the boats indeed were of American origin. Those which had been built in Cuba did not differ materially from the others, either in type or size. They are all expensive to build, presumably because of their peculiar construction. But those which had been built in Cuba do not appear to have cost much, if any, more than they would have cost if built in Key West. All had been well maintained; and even Mr. Horr concedes that an old boat may be kept up so as to be "as good as new" (*Paquete Record*, p. 39). Whether they were as good as new or not, need not be argued or determined. The claimants rest on the proposition that they were good enough to be worth the amounts of the awards, and the libelant has made no serious effort to show the contrary.

In view of the humane attitude of our Government in advocating the abolition altogether of the right to capture private commercial property at sea in time of war (3 *Wharton's Int. Law Digest*, § 342, pp. 260–263), it would seem that technical rules limiting the amount of compensation to be made for captures without probable cause should not be applied with any unnecessary rigor.

11. THE DECREES IN THE CASES ABOVE ENTITLED (Nos. 581–589) SHOULD BE AFFIRMED WITH COSTS.

Respectfully submitted.

CONVERS & KIRLIN,
Proctors for Appellees,
5 *Beekman Street, New York.*

J. PARKER KIRLIN, *Advocate.*

WASHINGTON, March 20, 1903.

Supreme Court of the United States.

October Term, 1902.

No. 578. The United States, Appellant,
vs.
The Spanish Smack Paquete Habana, Galban et al., Claimants.

No. 579. The United States, Appellant,
vs.
The Lola, Gonzales, Claimant.

No. 580. The United States, Appellant,
vs.
The Poder de Dios, Pengochea et al., Claimants.

No. 581. The United States, Appellant,
vs.
The Antonio y Paco, Lopez et al., Claimants.

No. 582. The United States, Appellant,
vs.
The Engracia, Gonzales et al., Claimants.

No. 583. The United States, Appellant,
vs.
The Severita, Trocha et al., Claimants.

No. 584. The United States, Appellant,
vs.
The Antonio Suarez, Vilar, Serra & Co., Claimants.

No. 585. The United States, Appellant,
vs.
The Fernandito, Trocha et al., Claimants.

No. 586. The United States, Appellant,
vs.
The Oriente, Carillo, Claimant.

No. 587. The United States, Appellant,
vs.
The Espana, Deus et al., Claimants.

No. 588. The United States, Appellant,
vs.
The Cuatro de Settembre, Bunuel, Claimant.

No. 589. The United States, Appellant,
vs.
The Santiago Apostol, De la Torre, Claimant.

Appeals from the District Court of the United States for the Southern District of Florida.

[April 6, 1903.]

Mr. Justice HOLMES delivered the opinion of the Court.

These are cases of fishing smacks, which were libelled as prize of war. The proceedings in all the cases are similar and the evidence to a large extent the same. It was decided by this Court in two of the cases, *Paquete Habana* and *Lola*, 175 U. S. 677, that smacks of this sort, engaged as these were, in coast-fishing for the daily market, were not liable to capture, and decrees were ordered that the proceeds of the vessels and cargoes be restored to the claimants, with damages and costs. On motion of the United States it was ordered that the decrees be modified so as to direct that the damages should be compensatory only and not punitive. Decrees were entered in each of the above-named cases by the District Court in pursuance of this mandate, and agreements between the United States the captors and claimants were filed, that the damages should be charged against the United States or the captors, or apportioned, "as to justice may appertain and as the legal responsibility therefor may appear;" saving the right to review the decrees as to amount and as to where the ultimate responsibility rested. The papers do not disclose such an agreement in the Cuatro de Settembre, but as the records so far as similar to the first two cases were not printed, we assume that the omission was only in the index, and that it was understood that this case should stand like the rest. The cases were referred to a commissioner to report the amount of damages. He reported his findings and the evidence. The United States excepted to the findings as excessive. The District Court entered decrees against the United States for the amounts, and the United States appealed on the grounds that the decrees should have gone against the captors and not against the Government, and that the damages were excessive and the exceptions to the commissioner's report should have been sustained.

We do not see how it is possible that a decree should be entered against the captors. There was no formal intervention by them, and whether a decree can be made against the United States or not, it has so far adopted the acts of capture that it would be hard to say that under the circumstances of these cases it has not made those acts its own. It is not disputed that the United States might have ordered the vessels to be released. It did not do so. The libels were filed by the United States on its own behalf, praying a forfeiture to the United States. The statutes in force seemed to contemplate that form of procedure, Rev. Stat. § 4618, and such has been the practice under them. The libels alleged a capture pursuant to instructions from the President. The captures were by superior force, so that that there was no question that the United States was interested in the proceeds. Rev. Stat. § 4630. The modification of

the decrees in regard to damages, on motion by the United States, imported a recognition of the interest of the United States in that matter, and its submission to the entry of decrees against it. The agreements to which we have referred had a similar import, although they indicated an awakening to a determination to argue the form of the decree. In the case of *Little* v. *Barreme*, 2 Cr. 170, conversely to this, the United States was not a party and the captor was. All that was decided bearing upon the present point was that instructions from the President did not exonerate the captor from liability to a neutral vessel. As to even that the Chief Justice hesitated. But we are not aware that it is disputed that when the act of a public officer is authorized or has been adopted by the sovereign power, whatever the immunities of the sovereign, the agent thereafter cannot be pursued. *Lamar* v. *Browne*, 92 U. S. 188, 199; and as to ratification, *Buron* v. *Denman*, 2 Exch. 167, 187, 189; *Secretary of State in Council of India* v. *Kamachee Boye Sahaba*, 13 Moo. P. C. 22, 86. See *Dempsey* v. *Chambers*, 154 Mass. 330, 332. The principle and authority of *Buron* v. *Denman* was recognized and followed by the Court of Claims in *Wiggins* v. *United States*, 3 Ct. of Cl. 412, 423.

If we are right so far, we think that under the circumstances of this case a decree properly may be entered against the United States. The former decree of this court remains in force and requires a final decree for damages. *Re Potts*, 166 U. S. 263, 265; *McCormick* v. *Sullivant*, 10 Wheat. 192, 200. The decree must run against the United States if a decree is to be made. In the *Nuestra Señora de Regla*, 108 U. S. 92, 102, the court was of opinion that the United States had submitted to the jurisdiction of the court so far as to warrant the ascertainment of damages according to the rules applicable to private persons in like cases. It seems to us that the facts here are not less strong. Decrees in cases which disclose no special circumstances have been recognized by subsequent statutes providing for their payment. *Glen*, Blatchf. Prize Cases, 375, Act of Feb. 13, 1864, c. 10, 13 Stat. 575; *Labuan*, Blatchf. Prize Cases, 165, Act of July 7, 1870, c. 220, 16 Stat. 649; *Sybil*, Blatchf. Prize Cases, 615, Act of July 8, 1870, c. 231, 16 Stat. 650; *Flying Scud*, 6 Wall. 263, Act of July 7, 1870, c. 219, 16 Stat. 649. See also Ibid. 650, c. 232; 651, c. 234.

We pass, then, to the other ground of the appeal. With regard to this it is objected that the exceptions to the master's report are not sufficient to open the question; referring to *Commander-in-Chief*, 1 Wall. 43, 50. But the objection being the general one that the evidence did not warrant the finding and all the evidence being attached to the report nothing more is needed.

On the amount of the damages we are of opinion that further proceedings must be had. We do not forget the weight that is given to the find-

ings of a master or commissioner upon matters of fact. But this weight is largely, although not wholly, due to the opportunity, which we do not share, of seeing the witnesses. So far as the commissioner disregarded the testimony of the witnesses whom he saw we should hesitate to overrule his conclusion, although it seems too absolute on the grounds set forth. But the result reached is based on documentary evidence which is before us, and as to which we have equal opportunities for forming a judgment. It appears to us plain that this evidence was given undue weight. The source from which it comes and the high valuations require that it should be taken with considerable reserve. The commissioner had a right, which he seems to have thought that he did not possess, to chancer the estimates. He adopted the owners' prices without qualification. The certificate of the harbormaster of Havana is dated November 23, 1898. It does not purport to be a copy of any earlier record. It is true that he makes his valuation as of March 1, 1898, but he does not say either in the certificate or in his testimony that he made that valuation at that or any other date before November 23. We shall not go over the other evidence in detail. Some at least of the vessels were old. The Paquete Habana, for instance, at least eighteen or twenty years. One-half interest was bought in 1892 for $2,400. She is valued in 1898 by owners, harbormaster and commissioner at $4,500. The Lola was purchased "at a cheap price," according to the owner, in 1887. The valuation of some of the other smacks is above the price said to have been paid for them in earlier years.

In the case of the Espana it appears that she was about fourteen years old, and cost when built ten thousand dollars. She is valued by the owners and harbormaster, agreeing as usual, at $9,000. The commissioner adopts this valuation. Yet it appears that the vessel was resold to the owners for $2,500. Whether this price was a fair value or not, and the owners would not give more, the result of the sale was that they had their boat back again. It is apparent, therefore, that their actual loss was only what they had to pay to get it, the loss from detention of the boat and any wear and tear and changes that it had undergone in the meantime. In a case of the present kind it would be going beyond the requirements of justice into the realm of very doubtful technicalities to disregard the fact that the vessel got back because it was due to a subsequent transaction with a stranger. There is some evidence that the same thing happened in some or all of the other cases. See *The Lively*, 1 Gall. 315, 321.

The fish are allowed for at the highest price in Havana during the blockade, which is too high a rate, and interest was charged at eight per cent, there being no reason apparent for charging more than six if interest was allowed. See *Lincoln* v. *Claflin*, 7 Wall. 132, 139; *The Amalia*, 34 L. J. Adm. 21; *Straker* v. *Hartland*, 2 Hem. & Mil. 570; *Frazer* v. *Bigelow Carpet Co.*, 141 Mass. 126. These are details, but they show what is

manifest throughout, that the owners' demands have been accepted without discrimination on evidence which does not justify the result.

We think that we have said enough to show that a revision of the findings is necessary. It seems to us better that this revision should take place in the District Court rather than be attempted by us. Whether further evidence shall be taken we leave to the parties and to that court.

Decrees reversed and cases remanded for further proceedings in accordance with this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.